

OF THE REGULATIONS
AND INSTRUCTIONS
FOR THE
ADMINISTRATION OF LAW AND JUSTICE
IN THE
U. S. NAVY.
— — — — —
1870.

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ORDERS,

REGULATIONS, AND INSTRUCTIONS

FOR THE

ADMINISTRATION OF LAW AND JUSTICE

IN THE

UNITED STATES NAVY.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1870.

The following Orders, Regulations, and Instructions are approved,
and all Circulars, General Orders, and Regulations which conflict with
them are hereby rescinded.

GEO. M. ROBESON,
Secretary of the Navy.

NAVY DEPARTMENT, *April 15, 1870.*

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ORDERS, REGULATIONS, AND INSTRUCTIONS.

CHAPTER I.

PUNISHMENTS WHICH COMMANDERS OF VESSELS MAY INFLICT OF THEIR OWN AUTHORITY.

SEC.

1. Officers to acquaint themselves with the laws, &c., for the government of the navy.
2. All punishments to be according to law.
3. Punishments which may be inflicted by commanders of vessels defined.
4. Investigation to be made before punishment is inflicted.
5. Punishments to be entered in the log-book.

SEC.

6. Responsibility of commanding officers in regard to punishments.
7. Punishment by other officers forbidden.
8. Suspension of officers by officer in temporary command.
9. Confinement of men by officer in temporary command.
10. Personal interference of officers in the arrest of drunken men.

SEC. 1. To the end that justice may be promptly, uniformly, and impartially administered, it is incumbent on every Officer of the Navy, upon whom the discipline of the service devolves in any degree, to make himself familiar with the laws of Congress and the Regulations and General Orders of the Department for the government of the Navy. It is more especially the duty of Officers who are liable to be employed on Courts-Martial to make themselves thoroughly conversant with these Laws, Regulations, and General Orders, and to acquire a competent knowledge of the Law and Practice of such Courts.

Officers to acquaint themselves with the naval laws, regulations, and general orders.

To acquire knowledge of the law and practice of courts-martial.

SEC. 2. The authority to punish offenses being strictly defined by law, no deviation from the limits prescribed will be tolerated.

All punishments to be according to law.

SEC. 3. Commanders of vessels only can impose punishment of their own authority, and they are not empowered to inflict any other than the following punishments upon persons under their command, except in pursuance of the sentence of either a General or a Summary Court-Martial.

Punishments which a commander of a vessel may inflict on commission and warrant officers.

Act of July 17, 1862, art. 10.

Upon a Commissioned or Warrant Officer—

1. Private reprimand.
2. Suspension from duty, arrest, or confinement, neither of which is to continue longer than ten days, unless the offense shall be of a kind to require investigation by a Court-Martial, in which case the arrest or confinement may be prolonged, subject to the limitation hereinafter specified. [*See sections 110, 111, post.*]

Punishments which a commander of a vessel may inflict on petty officers, seamen, &c. Upon a petty officer, or person of inferior rating, or marine—

Act of July 17, 1862, art. 10.

1. Reduction of any rating established by himself.
2. Confinement with or without irons, single or double, not to exceed ten days, except where it is decided to bring the offender to trial by General Court-Martial.

Confinement of prisoners to be tried by court-martial.

Commanders of vessels will keep in view that in this case the confinement is protracted simply to insure the appearance of the prisoner before the Court by which he is to be tried; he cannot, therefore, properly be subjected to greater rigor than is necessary to effect that object. In such cases the closeness of the confinement must, necessarily, depend on the nature and degree of the offense with which the prisoner may be charged, and, consequently, the degree of restriction must be left to the discretion of the Commander.

Degree of restriction in such cases.

Commanders of vessels to know and regulate the treatment of persons in confinement.

He is responsible, however, that subordinates exercise no cruelty toward persons in confinement, and that no measures are taken with regard to them without his knowledge and authority.

3. Solitary confinement on bread and water not exceeding five days.
4. Solitary confinement not exceeding seven days.
5. Deprivation of liberty on shore.
6. Extra duties.

Investigation to be made in all cases before inflicting punishment.

SEC. 4. No punishment is ever to be inflicted upon bare suspicion; but there must first have been such investigation as to have convinced the Commander of the vessel that the person accused is, probably, guilty of the offense charged.

Punishments inflicted by commander to be entered in the log-book.

SEC. 5. All punishments inflicted by the Commander of a vessel, or by his order, except reprimand, are to be entered on the log-book. This entry must include the name and

rank or rating of the offender, the date, and nature of the offense, and the kind and quantity of punishment. Act of July 17 1862, art. 10.

SEC. 6. Every Commander of a vessel is held responsible for all punishments inflicted on board. None, therefore, are to be ordered, except by him, unless, from his total incapacity by illness or prolonged absence, the Executive Officer or next line Officer in rank shall be authorized to assume the command of the vessel. Commanders of vessels responsible for all punishments inflicted on board the vessels they command.

SEC. 7. The infliction of any description of punishment by other Officers is forbidden. Punishment by other officers forbidden.

SEC. 8. In the absence of the Commander of a vessel, the Executive Officer, or Lieutenant acting as such, may relieve from duty an Officer for any infraction of discipline, but will report his action in the case to the Commander with the least possible delay. Temporary suspension of officers from duty in the absence of the commander.

SEC. 9. In like manner, the Executive Officer, or other Senior Lieutenant left in charge of the vessel during the temporary absence of her Commander, is authorized to confine such of the crew as shall be insubordinate or refractory, until the circumstances shall be reported to the Commander. Temporary confinement of persons of the crew in the absence of the commander.

SEC. 10. No Officer will interfere personally with the arrest of a drunken man more than shall be absolutely necessary; but the arrest shall always be made by persons not above the grade of petty officers, who are to be instructed to use no more force than that required to restrain or confine him. In all such cases neither altercation nor discussion should be held with the offender, nor should he be exposed in any situation which may tend to increase his excitement and lead to further acts of violence and insubordination. Act of April 23, 1800, § 1.

Officers to avoid personal interference in the arrest of drunken men.

CHAPTER II.

SUMMARY COURTS-MARTIAL.

SEC.

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SEC.

28. Administration of oaths to be recorded.
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30. Accused to be informed of his right to counsel.
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33. Testimony to be oral, on oath, administered by the Senior Member.
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36. Drawing up of finding and sentence.
37. Punishment which the Court is empowered to inflict.
38. Court may disrate for incompetency.
39. Remittance of sentence.
40. Approval and execution of sentence.
41. How subscribed by Commander when no Senior Officer is present.
42. Sentences to loss of pay.
43. Record.
44. Court dissolved.

Summary courts-martial.

Act of March 2, 1855, § 5.

SEC. 11. Summary Courts-Martial were established for the trial in the Navy of lesser offenses which the commanders of vessels may deem deserving of greater punishment than they are by law authorized to inflict upon petty officers and persons of inferior rating under their command, but not sufficient to require trial by General Court-Martial.

Power of summary courts.

Act of March 2, 1855, § 4.

Adequate punishment.

Act of July 17, 1862, art. 21.

SEC. 12. Summary Courts-Martial have no power to try Capital cases or Commissioned Officers; and, as by law Courts-Martial are required "in all cases of conviction to adjudge a punishment adequate to the nature and character of the offense committed," it follows that Summary Courts should not be convened to take cognizance of offenses, the proper punishment of which, in case of conviction, would be more severe than such Courts are authorized to impose.

SEC. 13. It is to be kept in view that while a General Court-Martial can legally impose any punishment which a Summary Court is empowered to award, the latter can inflict no other punishments than those hereinafter named in sections 37 and 38.

Punishments common to general and summary courts-martial.

Act of March 2, 1855, § 10.

SEC. 14. Whenever the Commander of a vessel decides that a trial shall take place, it is his duty to convene the Court with the least possible delay.

Trials not to be delayed unnecessarily.

SEC. 15. The form of convening a Summary Court-Martial will be by a brief written order, addressed by the Commander of the vessel to the Senior Member of the Court, stating the names and rank of the members of the court and the recorder, and the time and place of meeting, and by written or verbal orders to the other Members of the Court and the Recorder.

Form of convening.

SEC. 16. The Court must consist of three Officers, not below the rank of Ensign, as members, and of some competent person to act as Recorder. The Commander of a vessel has authority to order any Officer under his command to perform that duty. The Senior Member of the court will preside.

Constitution of summary courts-martial.

Act of March 2, 1855, § 5.

SEC. 17. In case it shall be necessary to order a Summary Court on board of a vessel which has not officers enough on duty of the required rank to compose a Court, if the vessel be in company with others, the Senior Officer present may order a sufficient number of officers of the proper grade to report to the commander of the vessel, in which the deficiency shall exist, for temporary duty, in order that he may appoint them members of the court.

Deficiency of members may be supplied by senior officer, when sailing in company with other vessels.

SEC. 18. When a non-commissioned officer, musician, or private of the marine corps, is to be tried by a summary court, it is deemed proper, if the exigencies of the service will permit, that one or more marine officers should be detailed as members of it.

Detail of marine officers, when persons belonging to the corps are to be tried.

SEC. 19. At the request of the Senior Officer of the court, the commander of the vessel or station at which it is held, will direct an orderly to be detailed to attend the meetings of the court and execute orders.

Orderly to be detailed to attend the meetings of the court.

SEC. 20. *Witnesses are to be summoned by the Recorder through the Executive Officer of the vessel, and the summons must be obeyed, unless disapproved by the Commanding Officer for some reason to be stated in the record.*

Summoning of witnesses by the recorder. G. O. April 4, 1855, § 7.

Accused to be furnished with copy of specification, before trial.

Recorder to certify that the rule has been complied with.

SEC. 21. As soon as practicable after a trial is determined on, and before the court shall assemble, the accused shall be furnished with a copy of the specification of the offense or offenses alleged against him. The recorder will certify on the *original specification, appended to the record*, that this rule has been complied with.

Specification to be concise and explicit. *G. O. April 4, 1855.* § 5.

Offenses committed at one time by the same person, to be comprised in one specification. *Ibid.*

SEC. 22. The specification must be as brief as practicable, and describe the offense or offenses alleged to have been committed in such plain and explicit terms that the accused may know what he has to answer, and the court may know what they are to look into; and *all offenses or misconduct committed at any one time by the same person, and intended to be charged against him, must be comprised in the same specification*, which must be approved before trial by the officer who shall convene the court.

How proceedings of summary courts-martial are to be conducted.

Act of March 2, 1855, § 9.

SEC. 23. Summary courts-martial will follow the same forms of procedure and rules of evidence as those observed by general courts-martial, so far as they shall be applicable to, and not inconsistent with, the conciseness and precision enjoined by the law, or with the forms and rules which, in conformity therewith, are now or may hereafter be prescribed by the Secretary of the Navy, with the approval of the President of the United States.

Attention of members and recorders of summary courts called to specific forms and rules.

SEC. 24. The attention of members, and especially of recorders of summary courts-martial, is particularly called to the passages in this chapter marked in italics, which are intended to distinguish not only the specific forms and rules peculiar to summary courts, but also to mark the points required to be entered in the record, the omission of which might invalidate the proceedings.

The order convening the court to be appended to the record.

SEC. 25. *The order for convening the court, and also the original specification, approved and signed by the officer ordering the court, must be appended to the record.* If, however, more than one case is to be tried by the same court, the order is to be referred to in each subsequent record, so as to

The record of every case tried to be made up separately.

show that the proceedings of the court are continuous. The record of each case must be made up separately.

Challenges before summary courts to be recorded and referred to the officer who ordered the court.

SEC. 26. If objection be made by the accused to any member of the court, *the recorder will so state it in the record, and the court, if they think fit, will make the objection known to the commander of the vessel, who will, at his discretion, order another member of the court, or continue the member objected to.*

SEC. 27. Before proceeding to trial the Recorder will administer to all the members of the Court, the oath or affirmation required by law. And then the Senior Member of the Court will administer the prescribed oath or affirmation to the Recorder.

Members of Summary Courts-Martial to be sworn.

Act of March 2, 1855, § 5.

SEC. 28. *The record must always show that the oaths or affirmations prescribed by the law were duly administered to each member and to the Recorder in presence of the accused.*

Administration of oaths to be recorded.

SEC. 29. If more than one case be tried by the same Court, in each case the prescribed oath shall be administered anew to the members and Recorder of the Court.

Oaths to be administered in every case tried by the same Court.

SEC. 30. At the proper stage of the proceedings, the Recorder will inform the Accused that he will be allowed counsel to advise and assist him, and, if he request it, the Court may allow a commissioned, warrant, or petty officer to appear as counsel, and cross-examine witnesses in his behalf; but neither written defense, nor argument, nor any protracted oral defense shall be admitted.

Counsel to be allowed the accused. G. O., April 4, 1855, § 8.

No elaborate defense or argument allowed. *Ibid.*

SEC. 31. The Recorder of a Summary Court-Martial shall regard himself as Counsel for the Accused, in precisely the same manner, and to the same extent, as the Judge Advocate of a General Court-Martial is required to act. [Sections 176, 177, *post.*]

Recorder to uphold the legal rights of the accused.

SEC. 32. *The Accused shall not be required to plead guilty or not guilty to the specification; but if, of his own accord, he shall plead guilty to the whole or any part thereof, the Court will allow no testimony to be introduced by the prosecution, but may, at their discretion, admit testimony to prove the good character of the offender, or in extenuation of the offense. The prosecution has the right to cross-examine the witnesses which the Accused shall produce for either purpose.*

Accused not to be required to plead. G. O., April 4, 1855, § 6.

Proceedings when the accused shall plead guilty. *Ibid.*

Cross-examination of witnesses by the prosecution.

SEC. 33. All witnesses before Summary Courts-Martial must be sworn or affirmed before giving their testimony, which must be delivered orally. The oath must be administered by the Senior Member of the Court in presence of all its Members and the Accused, in the form prescribed by law. *The Recorder must state that each witness was sworn according to law, and in the presence of the Accused.*

Testimony to be given on oath, orally.

Act of March 2, 1855, § 7.

Oath, how and by whom administered.

SEC. 34. No testimony not clearly relevant is to be admitted, nor shall any documentary evidence be read to the Court or be appended to the record.

Neither irrelevant nor documentary evidence to be admitted. G. O., April 4, 1855, § 8.

Finding and punishment of offenses by the Court. *G. O.*, April 4, 1855, § 6. SEC. 35. In any case the Court may find the prisoner guilty of the whole or any part of the misconduct charged, according to the evidence, and adjudge punishment for so much as shall be found proved.

Finding and sentence to be drawn up explicitly. SEC. 36. In drawing up the finding and sentence, the Recorder will be careful to use clear and explicit terms, declaring exactly what facts are proved or not proved, and, if proved, the punishment awarded according to the provisions of the law.

Punishments which Summary Courts-Martial are authorized to inflict. SEC. 37. Summary Courts-Martial are empowered by law to sentence petty officers and persons of inferior ratings to any one of the following punishments, viz:

Act of March 2, 1855, § 7.
Bad conduct discharge.

First. Discharge from the service with bad conduct discharge; but the sentence not to be carried out in a foreign country.

Solitary confinement.

Second. Solitary confinement in irons, single or double, on bread and water, or diminished rations, provided no such confinement shall exceed thirty days.

Third. Solitary confinement in irons, single or double, not exceeding thirty days.

Fourth. Solitary confinement not exceeding thirty days.

Fifth. Confinement not exceeding two months.

Reduction of rating.

Sixth. Reduction to next inferior rating.

Deprivation of liberty.

Seventh. Deprivation of liberty on shore on foreign station.

Extra duties and loss of pay.

Eighth. Extra police duties, and loss of pay not to exceed three months, may be added to any of the above punishments.

Irreverent behavior during divine service.

Act of July 17, 1862, art. 2.

Irreverent or unbecoming behavior during divine service shall be punished as a General or Summary Court-Martial shall direct.

Ibid. Article 10.

SEC. 38. Summary Courts-Martial may disrate any rated person for incompetency.

Remission of sentence.

Act of March 2, 1855, § 8.

SEC. 39. The Officer who orders a Summary Court-Martial has the right to remit in part, or altogether, but not to commute the sentence of the Court, and the law makes it his duty to remit any part or the whole of any sentence,

the execution of which would, in the opinion of the Surgeon or Senior Medical Officer on board, given in writing, produce serious injury to the health of the person sentenced. Or, if the Commander of the vessel thinks proper, he may submit the case again, without delay, to the same or another Summary Court-Martial, which may, upon the testimony already taken, remit the former punishment and substitute some other of the authorized punishments.

SEC. 40. No sentence of a Summary Court-Martial shall be carried into execution until the proceedings and sentence shall have been approved by the Officer ordering the Court, and by the Commander-in-chief, if present, or, in his absence, by the Senior Officer.

Approval and execution of sentence of Summary Court.

Acts of March 2, 1855, § 2, and of March 6, 1867, § 5.

SEC. 41. Should neither of these Officers be present, that fact will be signified by the Officer who ordered the Court, in approving or disapproving the proceedings, in the following manner:

Absence of Commander-in-chief or other Senior Officer to be noted.

“The proceedings, finding, and sentence of the Court are approved,” (or *disapproved*, &c.)

SOTHEY WEST, *Commander*,

Commanding U. S. S. ———, and Senior Officer present.

SEC. 42. Sentences of Summary Courts-Martial, which “*involve loss of pay*,” either in direct terms or by *disrating the offender*, cannot lawfully be executed until approved by the *Secretary of the Navy*, and must, therefore, be referred to him. This reference is to be briefly and legibly indorsed upon the record by the Officer who first revises the proceedings. In such cases the same formal approval of the proceedings by the Officers mentioned in Section 40 is required as if they had power finally to confirm the sentence.

Sentences to loss of pay to be referred to the Secretary of the Navy.

Act of 6 Mar., 1867, § 5.

Act of 2 Mar., 1855, § 8, and 2 Mar., 1867, § 5.

SEC. 43. Records of proceedings of Summary Courts-Martial are to be kept and made up in the same manner as hereinafter prescribed in regard to the records of General Courts-Martial. [§ 275, *post*.] All such proceedings are required to be transmitted to the Navy Department.

Record.

Act of 2 Mar., 1855, § 9.

SEC. 44. The Court is dissolved by the authority that ordered it to convene.

Dissolution of Court.

CHAPTER III.

NAVAL COURTS OF INQUIRY.

SEC.

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70. Oath of Interpreter.
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75. Witnesses to be sworn.
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79. Order in taking the evidence.

SEC.

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99. Report to be read in presence of the witnesses of the loss.
100. Questions to be put to the witnesses.

Object and advantage of Courts of Inquiry.

SEC. 45. In important cases, where the facts are various and complicated, where there appears ground for suspecting criminality, or where crime has been committed, or much blame incurred without any certainty on whom it ought

chiefly to fall, a Court of Inquiry affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings.

SEC. 46. The power to order Naval Courts of Inquiry is vested in the President of the United States, the Secretary of the Navy, or the Commander of a fleet or squadron.

Courts of Inquiry
—by whom ordered.

Act of July 17
1862, art. 23.

SEC. 47. Commanders of fleets or squadrons serving in the waters of the United States, although not empowered to order General Courts-martial, except by authority of the President of the United States, are expected, on the occurrence of any matter serious enough in their judgment to require thorough investigation, to order a Court of Inquiry as soon as practicable, and, on the proceedings being closed, to submit them, by the earliest opportunity, to the Secretary of the Navy, in order that he may act advisedly in any course he may think proper to pursue.

Courts of Inquiry
to be convened
in important
cases requiring
investigations.

SEC. 48. Where the matter is of less importance, or in the case of a Commanding Officer acting singly, and consequently having no authority to order a Court of Inquiry, a Board of three officers will be ordered to make the investigation. [*See chapter vi, sections 312, 313, 314 post.*]

Board of Investi-
gation to be
ordered in cer-
tain cases.

SEC. 49. Courts of Inquiry must not consist of more than three commissioned officers as members and a Judge Advocate, or a person to do duty as such.

Constitution of
Courts of In-
quiry.

Act of July 17,
1862, art. 23.

SEC. 50. The composition of the Court, either in regard to the rank of its Members or the department of the Service to which they belong, should be regulated by the circumstances to be inquired into.

Rank and depart-
ment or corps
of Members
composing the
Court.

SEC. 51. In case the conduct or character of an Officer may be implicated in the investigation, the Members of the Court should not be, if possible, inferior in rank to that Officer.

Detail of Mem-
bers, when char-
acter or conduct
is implicated.

SEC. 52. When an Officer in the Navy whose conduct is to be investigated, is not an Officer of the Line, it is proper, if the exigencies of the Service will permit, that one or more Officers of the department to which he belongs should be detailed for duty on the Court.

Detail of Mem-
bers when the
inquiry relates
to an Officer not
of the line.

SEC. 53. In every such case, Line Officers, Officers of other Corps of the Navy and of the Marines, will take precedence according to their relative rank.

Precedence of
Members on
Courts of In-
quiry.

Procedure in case of a reduction in number. SEC. 54. Should the number named in the order convening the Court be reduced, the Court cannot proceed without authority from the Officer who convened it.

Detail of orderly in waiting. SEC. 55. At the request of the President of the Court the Commander of the vessel or station, on board of or at which the Court is held, is to direct an orderly to attend its meetings and execute its orders.

Powers of court. SEC. 56. A Court of Inquiry have power to summon witnesses, administer oaths, and punish contempts, in the same manner as Courts-Martial.
Act of July 17, 1862, art. 23.

In reporting facts not to give an opinion, unless so directed. SEC. 57. They may be ordered to report the facts of any case referred to them for investigation, either with or without an opinion, but are not to give an opinion, unless expressly required to do so in the order for convening.
Ibid.

What is meant by facts to be reported. SEC. 58. When a Court is required to report facts, it is not to be understood that the bare record of the testimony is meant, but the result and conclusion of the Court from hearing the evidence.

Duties of President of the court. SEC. 59. It is the duty of the President of a Court of Inquiry to preserve order, to decide upon matters relating to the routine of business, and to adjourn the Court from day to day, as in his judgment will be most convenient and proper for the transaction of the business before it; but

Question of adjournment to be decided by Court. should objection be made by any Member of the Court to an adjournment announced by the President, the question will be submitted to and decided by the Court.

Duties of Judge Advocate. SEC. 60. It is the duty of a Judge Advocate of a Court of Inquiry:

1. To summon all the witnesses required for the investigation, and to lay before the Court a list of them, with a memorandum of the facts expected to be established by each.
2. To administer the oath or affirmation to the Members of the Court, according to the form prescribed by Article 25 for the Government of the Navy, and himself to take the oath or affirmation required by the same article.
3. To record the proceedings of the Court under its direction and control, and to copy all original documents in the proceedings.
4. To put the questions to the several witnesses.

5. To assist the Court in methodizing the information it may receive; to minute in the proceedings the opinion of the Court, if called for, and to render every assistance in his power in the investigation to enable the Court to lay the whole circumstances of the case before the convening authority in a clear and explicit form.
6. In conjunction with the President of the Court, to authenticate the proceedings by his signature.

SEC. 61. Courts of Inquiry will assemble at the time and place named in the order convening them. Rule of assembling.

SEC. 62. The Court on its first assembling is usually closed until the order constituting it, and the instructions contained therein, are read and attached to the proceedings. Precept and instructions read.

SEC. 63. The Court having decided on the mode of procedure, the Complainant (if there be one) and the Accused shall be called in, and the complaint or subject to be investigated shall be communicated to the accused party. Complainant and Accused introduced.

SEC. 64. Whether the investigation shall be held in open court or not must depend on the nature of the matter to be examined, and, if not specified by the convening authority, will be decided by the Court. Whether the Inquiry is to be held in closed or open court, decided.

SEC. 65. The Judge Advocate, as Recorder, is Prosecutor in the case, but the Complainant or Accuser (if there be any) may be allowed to remain in Court and make suggestions to the Judge Advocate. Complainant may be present in Court.

SEC. 66. The parties before a Court of Inquiry, both the Accuser and the Defendant, may be allowed counsel or friends to be present. Parties to be allowed counsel.

SEC. 67. A Member of a Court of Inquiry may be challenged for cause by either party. Challenge of Member.

SEC. 68. Circumstances may arise which will render the employment of a short-hand writer or Reporter necessary, and there may be also occasions requiring the services of an Interpreter. In either case, the persons so employed are to be sworn. Reporter and Interpreter to be sworn when employed.

SEC. 69. As no form of oath is fixed by statute, the following may be administered by the Judge Advocate: To a Clerk or Reporter, "You, A. B., swear (or affirm) faithfully to perform the duty of Clerk or Reporter in aiding the Judge Advocate to take down and record the proceedings of the Court, either in short-hand or ordinary manuscript." Oath of Reporter.

Oath of an Interpreter.

SEC. 70. To an Interpreter: "You, A. B., swear faithfully and truly to interpret or translate in all cases in which you shall be required to do between the United States and the accused."

Reporter and Interpreter not to be employed without authority.

SEC. 71. Whenever in the opinion of the Court, the services either of a Reporter or an Interpreter are requisite, the sanction of the Convening Authority must be obtained before employing them.

To be present in open court only.

SEC. 72 Neither Reporter nor Interpreter are to be allowed to be present except in open Court.

The Accused may be relieved from duty, but need not be arrested.

SEC. 73. An Officer whose conduct is to be investigated by a Court of Inquiry need not necessarily be put or kept under suspension for that purpose; he may, however, if necessary, be excused at his own request from attending to the particular duties of his position during such investigation.

The accused may be present.

SEC. 74. It is the right of the Accused to be present at the investigation, though it is not obligatory upon him to take any part in the inquiry, unless he prefer to do so. He can not, however, refuse to obey an order directing him to appear before the Court.

Witnesses sworn.

Act of July, 1862, art. 14.

SEC. 75. When the Court is ready to proceed with the investigation, the witnesses shall be called before it separately, and the President of the Court shall administer to them severally the oath (or affirmation) prescribed for witnesses before General Courts-Martial.

Witnesses to speak only to facts.

SEC. 76. Witnesses should all be cautioned in giving their testimony to speak to facts only which are within their own knowledge.

Testimony, how recorded.

SEC. 77. The testimony is to be regularly taken down in writing, and, as far as the nature of the case will admit, the same rule of proceeding to be followed as in General Courts-Martial.

Documents.

SEC. 78. Original documents handed into Court must be copied in the proceedings.

Order in taking the evidence.

SEC. 79. The evidence on the part of the prosecution is to be first taken, after which the accused shall be asked if he has anything to offer on the subject, or any evidence to produce.

SEC. 80. Each witness should be first called on to state all he knows upon the subject, and then be examined in the usual order, viz :

1. By the party calling the witness.
2. By the opposite party.
3. By the Court.

SEC. 81. The Accused should not himself be examined, and he may decline to answer any questions which may tend to criminate himself.

SEC. 82. It is also optional with the Accused to abstain from putting any questions to witnesses, either on examination-in-chief or on cross-examination ; he is equally at liberty to decline making any statement to the court touching his alleged misconduct, should he deem it inadvisable to take that course.

SEC. 83. In case, however, the Accused should think proper to lay before the Court a general statement or defense, he is strictly forbidden to publish or cause or permit it to be published until final action shall be had in his case.

SEC. 84. Neither party, the Accuser nor the Accused, can demand a copy of the proceedings. The evidence, of whatever nature, is intended only for the Officer convening the Court.

SEC. 85. The examination of witnesses being finished, both parties before the Court are to be allowed an opportunity of addressing the Court if they desire to do so.

SEC. 86. Finally, the Court having been cleared and the proceedings read over for the purpose of aiding the memory of the Court, the instructions contained in the order by which the Court is constituted should also be carefully examined and scrupulously followed.

SEC. 87. After mature deliberation on the testimony recorded on the trial, the Court will proceed to report the facts, and, if so directed, an opinion on the merits of the case, and the propriety or expediency, or otherwise, of further judicial action.

SEC. 88. The proceedings of a Court of Inquiry must be authenticated by the signatures of the President and the Judge Advocate of the Court only, and are then to be submitted for the consideration of the Officer convening the Court; after which the Court may adjourn, temporarily to

await his further instructions, until he shall reassemble it or order it finally to dissolve.

Revision of proceedings.

SEC. 89. The proceedings may be revised as often as the Convening Authority shall think necessary and new evidence may be received and recorded on every such occasion, and on the reassembly of the Court, the President may recall and re-examine any of the previous witnesses with a view to elicit every possible information that the case admits.

Re-examination of witnesses.

Opinion of Court not to be disclosed.

SEC. 90. As the expression of opinion might prejudice the accused party in case of trial by a General Court-martial, it is held to be highly irregular and a breach of discipline on the part of any member of the Court to disclose or publish the opinion either of the Court or of individual members without the sanction of the Officer to whom the proceedings have been submitted.

Dissolution of Court.

SEC. 91. The Court is dissolved by the authority that ordered it to convene.

PARTICULARS TO BE INVESTIGATED IN CASE OF THE LOSS OR GROUNDING OF VESSELS OF THE UNITED STATES.

Inquiry into the loss of vessels.

SEC. 92. Whenever a Court shall be appointed to inquire into the cause of the loss of a vessel, or of her having touched the ground, the following points are, invariably, to be included in the investigation :

Documentary evidence to be produced in Court.

1. The rough log-book, Captain's night order-book, and the chart by which the vessel was navigated, or one of the same, must, if practicable, be produced in Court.

Latest determination of the ship's position.

2. The Court will investigate whether the proper chart, provided by the Bureau of Navigation, was used ; and whether the position of the vessel, at the last favorable opportunity, was accurately determined by observation or otherwise ; and, if not, when it was last accurately ascertained ?

Log-book to be examined in reference to the course steered.

3. Whether the courses steered by the standard compass, corrected for local deviation and the distances run on the day before the vessel grounded, were correctly inserted in the log-book. Also, when the vessel was last swung for local deviation.

Examination by Court of the ship's position.

SEC. 93. The Navigator or some other competent officer of the vessel, on board of which the Court shall be held, is to be directed to work up the reckoning of the vessel whose

loss or grounding may be the subject of inquiry, from the data obtained from her Navigating Officer, to enable the court to fix the true position of the vessel at the time of her taking the ground.

SEC. 94. The officer appointed to perform this duty will submit to the Court in writing, attested by his signature, the result of his work, to the accuracy of which he shall be sworn. The position of the vessel so determined shall be laid off on the chart by which she was navigated, also her position when ashore, as determined by cross-bearings taken from the log-book. The rate and direction of the tide stream, and the time of tide, should be stated, if possible.

Result of examination to be in writing and on oath.
Positions of ship to be laid off on chart.
Rate, direction, and time of tide.

SEC. 95. The documents referred to in the foregoing section, with an attested extract from the log, commencing at least forty-eight hours before the vessel touched the ground, are to accompany the minutes of the Court.

Documents to accompany the record of Court.

SEC. 96. If land was seen, and the distance estimated before the vessel struck, it is to be ascertained what steps were taken during the time it was in sight to correct the run of the vessel.

If land was seen what steps were taken to correct the run.

SEC. 97. The Court will rigidly investigate the manner in which the instructions to Officers Commanding vessels on approaching land have been observed. (See paragraphs 213, 613, 614, 626, 629, *Regulations for the Navy of the United States*, 1870.)

Court to inquire whether the Naval Instructions have been obeyed.

SEC. 98. Whenever inquiry is to be made into the grounding or loss of a vessel of the United States, the Court will call for the official report of the Commander of such vessel, containing the narrative of the disaster.

SEC. 99. This report shall be read in Court, in presence of the Commander and such of the surviving Officers and Crew as can be assembled.

SEC. 100. After these witnesses have been sworn the following questions will be put to them, respectively, by the Court:

First. (To the Commander.) Is the narrative just read to the Court a true statement of the grounding (or wreck) of the United States late vessel the ———?—Answer.

———.

Second. Have you any complaint to make against any of the surviving officers and crew of the said vessel on that occasion?—Answer. ———.

Third. (To such of the Officers and Crew as may be assembled.) Have you anything to object to the narrative just read to the Court, or anything to lay to the charge of any Officer or man with regard to the loss of the United States late vessel, the ———?—Answer. ———.

CHAPTER IV.

REDRESS OF WRONGS, ARREST, AND CHARGES.

SEC.

101. Duty of inferiors.
102. Exercise of authority by superiors.
103. Punishments to be conformable to law.
104. Course of subordinate who thinks himself wronged.
105. Applications for redress, how, and to whom to be made.
106. Inquiry into alleged misconduct.
107. Accused to make statement.
108. Complaints to be confined to facts.
109. Action of superior in cases not requiring trial.
110. Action of superior in cases requiring trial.
111. Accused to be released if no trial is to take place.
112. Temporary release of officers under suspension or arrest.
113. Entire discharge from arrest a bar to further action.
114. Action in the case of the arrest or suspension of a Paymaster.
115. Action on the restoration of a Paymaster to duty.
116. When inventory of stores cannot be taken.
117. Books and vouchers of Paymasters in arrest.
118. Duty of an Officer when arrested.
119. Restriction of Officers in arrest.
120. Power of all Officers to quell quarrels.

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121. Officers have no right to demand a trial.
122. Nor, being in arrest, to insist on being tried.
123. Powers of Convening Authority in relation to the charges.
124. Rules for framing Charges and Specifications.
125. Facts of a distinct nature to be distinctly charged and specified.
126. Special reference to Articles of War not necessary.
127. Offenses not specified, how charged.
128. Specifications, how framed.
129. Recital of written instruments.
130. When the substance, only, is intended to be set forth.
131. Setting forth of particular words.
132. Figures, proper names, and titles, how written.
133. Intention, to be expressed in the language of the law.
134. Where the law attaches higher criminality to acts.
135. Alterations in the charges or specifications.
136. Letter of Officer transmitting charges to be put on record.
137. Charges not to be held back to accumulate.
138. Limitation of time for ordering trial.

SEC. 101. All inferiors are required to obey, readily and ^{Duty of inferiors.} strictly, and to execute promptly, the lawful orders of the superiors set over them.

SEC. 102. Authority is to be exercised with firmness, but ^{Proper exercise of authority by superiors.} with justice and kindness, toward inferiors.

Superiors, of every grade, are forbidden to injure those under their command by tyrannical or capricious conduct, or by abusive language.

SEC. 103. Punishments shall be strictly conformable to ^{Punishments.} the Laws for the Government of the Navy.

Course to be taken by subordinates who think themselves wronged.

SEC. 104. If any Officer, or other person of the Navy, shall think himself wronged by a superior, he is required, in the first place, to seek redress at the hands of the Officer who has wronged him; and if, upon a respectful application thus made, redress be denied or unreasonably delayed, the complaint may be carried to the Commander-in-chief of the fleet, squadron, or station to which the complainant belongs; whereupon it shall be the duty of the Commander-in-chief to examine into the case, and, if wrong has been done, to have it redressed.

How and to whom applications for redress are to be made.

SEC. 105. The application for redress must be made in writing through the immediate Commanding Officer to the Commander-in-chief of the fleet or squadron, and the supposed aggressor must be allowed a reasonable time either to redress the grievance or return the complaint with his refusal. If he shall refuse redress in express terms, it will be the duty of the Commander-in-chief of the fleet or squadron to take such action in the matter as in his judgment justice and the good of the service demand. If an investigation

Duties of Commander-in-chief when redress is refused.

When not empowered to act to report facts to the Department.

by Court-martial be, in his opinion, necessary, and the alleged wrong shall have occurred within the waters of the United States, then a succinct report of the case, together with all the correspondence relating thereto, shall be submitted by the Commander-in-chief to the Secretary of the Navy, unless authorized by the President of the United States to order a Court-martial.

Inquiry to be made into complaints of misconduct.

SEC. 106. In order to avoid unnecessary recourse to General Courts-martial, it is directed that where an Officer or other person shall be reported for grave misconduct to his immediate commanding officer, the latter shall institute a careful inquiry into the circumstances on which the complaint shall be founded. To this end he will call upon the complainant for a written statement of the case, together with a list of his witnesses, mentioning where they are to be found, and a memorandum of any documentary evidence bearing on the case which it may be in his power to produce.

Complaints to be made in writing, with list of testimony.

Accused to make explanation.

SEC. 107. He shall, also, call upon the Accused for such counter-statement or explanation as he may wish to make, and for a list of persons he desires to have questioned in his behalf.

Complaints to be confined to facts.

SEC. 108. Officers making either complaints or explanations are to confine themselves simply and exclusively to

the facts of the case and are neither to express an opinion nor to impugn the motives of the opposite party.

SEC. 109. If, after due investigation, the Superior shall not think the offense such as to require the action either of a court of inquiry or of a Court-martial, he will relieve the person, if an officer, from suspension or arrest and restore him to duty, in all cases in which ten days shall have elapsed from the time the suspension or arrest was imposed. Under the same circumstances the Superior will be careful to order the release of a petty officer or person of inferior rating, should the legal time of his confinement, as a punishment, have expired.

Action of Superior in cases not requiring trial.

Restoration of officers to duty.

Act of July 17, 1862, art. 10.

Release of enlisted men when no trial is to take place.

Act of July 17, 1862, art. 10.

SEC. 110. If, on the contrary, the inquiry shall satisfy the Superior that the offense is such as to call for judicial action, he shall transmit to the Secretary of the Navy, or to the Commander-in-chief of the fleet or squadron, as the case may require, a particular statement of the misconduct with which the Accused is charged, embracing such detail of the circumstances and of the time and place in which they occurred, and, also, lists of witnesses, as may enable the Convening Authority to decide upon the propriety and expediency of ordering a court, and to frame charges and specifications should it be ordered. Under such circumstances the Accused may be continued under suspension or arrest to await the decision of the Convening Authority.

Action of Superior in cases requiring trial.

Statement of misconduct, etc., to be sent to the convening authority.

Restriction of Accused.

SEC. 111. If that decision be that no trial is to take place, the Accused shall be released at once and restored to duty. On the other hand, if the Officer empowered to convene a Court shall decide to bring the Accused to trial, the Court shall be assembled for that purpose as soon as the nature of the case and the interests of the Public Service will allow, unless, meanwhile, such information or explanation shall reach the Convening Authority as to make it advisable to withdraw the charges and restore the Accused to duty.

Accused to be released if no trial is to take place.

Trial, when decided on, to take place as soon as possible, unless—

SEC. 112. The Commander of a vessel or other competent authority may release, temporarily, and put on duty an officer under suspension or arrest, should an emergency of the service or other sufficient cause make such measure necessary. The order for temporary release shall be in writing assigning the reasons. In the case of arrest, the charges need not be withdrawn, and the temporary release of the Accused shall be neither a bar to any subsequent investigation or trial of the case that the Convening Authority

Temporary release of officers under suspension or arrest.

Temporary release no bar to future trial or investigation.

may think proper to order, nor to the future investigation of any complaint the Accused may make in regard to his suspension or arrest.

Entire discharge from arrest or punishment, a final bar. SEC. 113. Whenever any person in the Navy who shall have been placed under suspension, arrest, or confinement, or otherwise punished for misconduct, shall be released and entirely discharged by competent authority, such discharge shall foreclose forever further proceedings in the case by any Naval authority.

Action in case of the arrest or suspension of a Paymaster. SEC. 114. Whenever a Commanding Officer shall order a Paymaster under suspension or arrest, he shall take possession of the keys of the Paymaster's store-rooms and money chest, and immediately cause a seal to be placed on the latter in presence of such Paymaster; and the Senior Officer present shall, without delay, direct a Board of Officers, to consist of at least three Members, to take an inventory of the money, and, except in an extreme emergency, of the stores; and appoint a suitable person to take immediate charge of the same.

Action on the restoration of a paymaster to duty. SEC. 115. Should such Paymaster be released from suspension or arrest and restored to duty, the Senior Officer present shall in the same manner and under the same conditions as stated above, cause a second inventory of the money and stores to be taken, and the Paymaster restored to duty shall be held responsible only for the money and stores then on hand as thus ascertained. The Paymaster in question and the person appointed to take charge shall both be present when both the above inventories are taken, and they shall each be furnished with copies of the same.

When inventory of stores cannot be taken. SEC. 116. Whenever in either of the above cases the Senior Officer present shall deem it impracticable to have an inventory taken of the stores, he shall furnish the Paymaster with a certificate of such fact.

Rules in regard to books and vouchers of Paymasters in arrest. SEC. 117. Before a Paymaster under suspension or arrest shall be taken permanently from the vessel or station to which he has been attached, a reasonable time shall be allowed him to close up his books and complete his vouchers, and no books or vouchers, necessary to the perfect settlement of his accounts, shall, under any circumstances, be taken from his personal charge, unless absolutely necessary for the Public Interest, in which case a receipt of the same shall be furnished him by the person appointed to take charge of or relieve him from his duties.

SEC. 118. Every Officer shall, when arrested, deliver up his sword when required to do so by the authority of his Commanding Officer, and shall confine himself to the limits assigned him either at the time of his arrest or afterward, under pain of being dismissed from the service. An Officer under arrest will not visit officially his commanding or other Superior Officer, unless sent for; and in case of business he will make known his object in writing.

Penalty of breach of arrest.
Act of July 17, 1862, art. 15.

SEC. 119. No Officer placed under suspension or arrest shall be confined to his room, or restrained from the proper use of any part of the vessel to which before his suspension or arrest he had a right, except the quarter-deck and poop, unless such confinement or restraint shall be necessary for the safety of the ship, or the preservation of good order and discipline; and even then neither the confinement nor the additional restraint shall be imposed for any longer time than shall be absolutely necessary.

Unnecessary confinement of Officers in arrest prohibited.

SEC. 120. In the event of a riot or quarrel between persons belonging to the navy, it shall be the duty of the Senior Line Officer present to suppress such disturbance, and, if it be necessary, to arrest those engaged in it, even though they be his seniors, or superiors in rank. And all persons belonging to the navy who may be present shall render prompt assistance and obedience to the officer thus engaged in the restoration of order. Should there be no Line Officer present, the Senior Officer of any Department or Corps of the Navy will exercise the same authority, and be entitled to the same obedience.

Power of all Officers to quell quarrels.

SEC. 121. No Officer has the right to demand a Court-Martial on himself or others, the granting of a trial resting solely in the discretion of the Officer authorized to convene a Court.

Officers cannot demand their trial.

SEC. 122. Nor has an Officer who may have been placed in arrest any right to insist upon being tried, or to persist in considering himself under the restraint of such arrest after he shall have been released by proper authority, or to refuse to return to the exercise of his duty.

Nor being in arrest to insist on being tried.

SEC. 123. It is entirely within the discretion of the Officer empowered to convene a Court-Martial to direct what portions of the complaint against an Accused shall be embodied or omitted in framing the charges.

Powers of convening authority in relation to framing the charges.

When, therefore, such competent Officer shall decide to

True copy of charges to be sent to the Accused with the order for his arrest.

SEC. 123. If a party has a party tried by a Court-Martial, he will cause such charges and specifications against him to be prepared as he may consider proper, and will transmit a true copy of them, with an order for the arrest of the Accused, to the proper officer, who, on exhibiting such order to the Accused and carrying it into effect by receiving his sword, will at that time deliver to him said copy of the charges and specifications.

Act of July 17, 1862, art. 15.

Rules for framing the charges and specifications.

SEC. 124. In drawing up the charges and specifications all extraneous matter is to be carefully avoided, and nothing is to be alleged but that which is culpable and which the prosecution is prepared to substantiate before a Court-Martial.

Facts of a distinct nature, how charged and specified.

SEC. 125. Facts of a perfectly distinct nature are not to be included in one and the same charge or specification of a charge, but each different fact must be the subject of a distinct charge and specification.

Not necessary to refer specially to the Articles of War.

SEC. 126. It is not necessary to specify in a charge that an offense was committed in breach of any particular article or statute for the government of the Navy, but whenever the allegation comes directly under any enactment it should be set forth in the terms used therein.

Offenses not specified.

SEC. 127. When the offense is a disorder or neglect not specially provided for it should be charged as "scandalous conduct tending to the destruction of good morals."

Act of July 17, 1862, art. 7, § 2.

Specifications to be brief, clear, and explicit.

SEC. 128. The specifications to each charge, one or more, must be—

1. Brief, clear, and explicit. The facts, circumstances, and intent constituting the offense must be set forth with certainty and precision, and the Accused charged directly and positively with having committed it.
2. Certain as to the party accused, who must be described by his title and rank or rating; Christian name and surname written at full length, with the addition of the vessel or service he belonged to at the time the facts, with which he shall be charged, took place.
3. Certain as to time and place. The time and place, when and where the facts alleged occurred, should be set forth minutely and precisely. Should any doubt exist in regard to either, it may be set forth in the specification that the act was committed "on or about" such a time, "at or near" such a place, but the prefix of the date must embrace a reasonable time only.

Party accused, how described.

Specification of time and place.

4. Certain as to the person against whom the offense was committed. In the case of offenses against the person or property of individuals, the Christian name and surname, with the rank and addition, if he have any, must be stated at length, if known. If not known, the party injured must be described as a person unknown.

Party injured to be described.

5. Certain as to the facts, circumstances, and where intent forms an ingredient of the offense, the intent constituting the offense. It is not sufficient that the Accused be charged generally with having committed an offense. For instance, with habitual violation of orders or neglect of duty, but the particular acts or circumstances constituting such offenses must be distinctly set forth in the specifications.

Facts, &c., constituting the offense to be set forth.

SEC. 129. Written instruments, where they form part of the gist of the offense charged, must be set out verbatim, or where part only of the written instrument is included in the offense, that part alone is necessary to be set out. Great care is to be taken to set them out correctly.

Recital of written instruments.

SEC. 130. When the substance only is intended to be set out, it should be introduced by the words, "in substance as follows." The word "tenor" implies that a correct copy is set out.

Setting forth of the substance only.

SEC. 131. Where particular words are the gist of the offense they are to be set forth with particularity, or declared to be of the like meaning and purport. Where the language is profane or obscene, its nature will be indicated only in general and becoming terms.

Setting forth of particular words.

SEC. 132. No part of the charges should be in figures; numbers, dates, proper names, titles, and the like must be written at length and without abbreviation.

Figures, &c., to be written at length.

SEC. 133. In cases where the law has adopted certain expressions to show the intention with which an offense is committed, the intention should be expressed by the technical word prescribed. For example, a charge made against an Officer for making or signing a false muster, must be laid to have been done "knowingly;" and for embezzling or wasting public property, to have been done fraudulently. (See Article 7, § 6, Articles for the Government of the Navy.)

Intention should be expressed in the language of the law.

Where the law
attaches higher
criminality to
acts.

SEC. 134. In all cases in which the law attaches higher criminality to acts committed under particular circumstances, to bring the person within the higher degree of punishment, the act must be charged to have been committed under those circumstances, and the circumstances must be stated with certainty and precision. For instance, by section 6, article 3, Articles for the Government of the Navy, the penalty of death may be inflicted for desertion, betrayal of trust, or enticing others to commit these crimes, in time of war; in a charge, therefore, under this section it must be laid that the offense was committed in time of war.

Alterations in
the charges
and specifica-
tions.

SEC. 135. After a charge has been approved by the proper authority and ordered to be investigated, it is not competent for the Judge Advocate or any other person to make any alteration in it without first having obtained the consent of such authority.

If a Court-Martial consider any alteration to be necessary in a charge laid before it, the same must be submitted for the approval of the authority by whom the original charge was sanctioned, previously to the Accused being arraigned.

Letter of Officer
transmitting
charges to be
put on record.

SEC. 136. Any letter which may be written to the President or Judge Advocate of the Court by an Officer in transmitting the charges and specifications under which a party is to be tried, or a properly authenticated copy of the same, is in all cases to be filed with the charges as a part of the record of the Court.

Charges not to be
held back to ac-
cumulate.

SEC. 137. Offenses shall not be allowed to accumulate in order that sufficient matter may thus be collectively obtained for a prosecution without giving due notice to the offender,

Old offenses not
to be revived.

and no offense for which an offender has been formally reprimanded is to be revived and subsequently investigated, except when it may be indispensable to prove a particular habit charged.

Limitation of
time for order-
ing trial.

SEC. 138. No person in the Navy shall be liable to be tried and punished by a Court-Martial for any offense which shall appear to have been committed three years before the issuing of the order for such trial, unless the person, by reason of having absented himself or some other manifest impediment, shall not have been amenable to justice within that time.

CHAPTER V.

NAVAL GENERAL COURTS-MARTIAL.

SEC.

139. By whom convened.
140. Of whom they shall consist.
141. Number and rank of members.
142. Statement to be added to the order convening the Court.
143. Limitation discretionary with the convening authority.
144. Detail of Officers of the Corps to which the Accused belongs.
145. Rule in regard to Members who may be subject to challenge.
146. Senior Member to preside.
147. Duties of Presiding Officer.
148. Punishment of contempts.
149. Perjury and subornation thereof.
150. Responsibility of Members.
151. Punishment of Members.
152. Proper treatment of persons under trial.
153. Suspension of proceedings.
154. Absence of Members.
155. Legal absence of Members.
156. Absence of the Judge Advocate.
157. Custody of the Prisoner.
158. Responsibility of the Provost Marshal.
159. } Appointment of Provost Marshal.
160. }
161. Appointment of Judge Advocate.
162. Provisional appointment of Judge Advocate.
163. Duties of Judge Advocate before the assembling of the Court.
164. Lists of Witnesses.
165. Summoning Witnesses.
166. Proceedings of Court of Inquiry to be examined.
167. Inquiries to be made by the Judge Advocate.
168. Analysis or plan.
169. Judge Advocate as Recorder of the Court.
170. Judge advocate as Adviser to the Court.
171. Right of parties to his opinion.

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172. His duty to examine the charges and specifications.
173. Amendment of legal defects of charges.
174. Responsibility of Judge Advocate.
175. Judge Advocate as prosecutor.
176. Duty of Judge Advocate to the Accused.
177. To object to improper evidence.
178. Disregard of his opinion by the Court.
179. Detail of guard and orderlies.
180. Place of assembling prepared.
181. Where the Court is to be held.
182. Time and place of assembling.
183. Courts not to be held on shore in a foreign dominion.
184. The Accused brought into Court.
185. Precept and Charges to be appended to the Record.
186. Accused to appear unfettered.
187. Privilege of Challenge mutual to the parties.
188. Cause of objection must be assigned.
189. Withdrawal of challenged Member.
190. Action of Court when reduced in number below five.
191. Decision of the Court conclusive.
192. Judge Advocate cannot be challenged.
193. Judge Advocate and Court sworn.
194. Record to show that the oaths were administered.
195. No judicial act can be performed by the Court until they are sworn.
196. Employment of Reporter or Interpreter.
197. Court to be sworn and Members subject to challenge at each separate trial.
198. Postponement of trial.
199. Right of the Accused to Counsel.
200. Copies of Charges and Specifications to be laid before the Court.

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- 201. Charges to be read and discussed before arraignment.
- 202. Objections to the charges to be recorded and reported to the proper Officer.
- 203. Arraignment of the Accused.
- 204. Proceeding if the Accused plead guilty.
- 205. Plea of "not guilty;" standing mute.
- 206. Arraignment and reply to be recorded.
- 207. Plea in bar of trial.
- 208. Written statement of plea.
- 209. Proceeding when the plea is pronounced valid.
- 210. One witness only to be present in Court at a time.
- 211. Exception to competency of witness.
- 212. When the exception should be made.
- 213. All witnesses to be sworn.
- 214. Form of administering oaths.
- 215. Presiding Officer sworn as witness.
- 216. Swearing of all witnesses to be recorded.
- 217. Reading Charges and Specifications to witnesses.
- 218. Questions to witnesses to be in writing.
- 219. How evidence is to be recorded.
- 220. Rules in regard to documentary evidence.
- 221. Testimony of witness read to him for correction.
- 222. Erasure or obliteration not to be admitted.
- 223. Witness ordered to withdraw and his withdrawal recorded.
- 224. Order in which witnesses are to be examined.
- 225. Evidence for prosecution first taken.
- 226. Evidence for the defense.
- 227. Rules in regard to the written defense.
- 228. Defense closed.
- 229. Reply of Judge Advocate.
- 230. The Court may recall witnesses.
- 231. The trial finished.
- 232. Testimony and defense read; vote on the Specifications.
- 233. } Vote on the Charges.
- 234. }

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- 235. Vote on the punishment.
- 236. Opinion of the majority the opinion of the Court.
- 237. Proceedings when the required majority have not agreed.
- 238. Vote on the next lowest punishment proposed.
- 239. Court must convict or acquit Accused of every allegation.
- 240. Punishment awarded must be adequate to the offense.
- 241. Recommendation to clemency.
- 242. Where the penalty is designated by statute.
- 243. Punishment of death.
- 244. Death sentence, how determined.
- 245. Substitution of imprisonment for death penalty.
- 246. Sentences to imprisonment at hard labor restricted to capital cases.
- 247. Punishment of offenses not specified in the Articles.
- 248. Sentences to suspension from rank, duty, or pay.
- 249. The same punishments that a summary Court-Martial may inflict, may be inflicted by a General Court-Martial.
- 250. Term of imprisonment must be defined.
- 251. Solitary confinement.
- 252. Drawing up record of the finding and sentence.
- 253. Unanimity of votes not to be recorded.
- 254. Degree of guilt to be specified.
- 255. Authentication of judgment.
- 256. Record when the Court shall be dissolved before proceeding to judgment.
- 257. Recommendation to clemency.
- 258. Record attested and sent to the Convening Authority.
- 259. Report of Presiding Officer.
- 260. The Officer who ordered, only can dissolve the Court.
- 261. Confirmation and execution of sentence.
- 262. Revisal of proceedings.
- 263. Court entitled to a full exercise of judgment.
- 264. Proceedings must be sent back for revision before the Court is dissolved.

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 265. New testimony precluded on revision.
 266. Record of revisal to be kept separately.
 267. Powers of the Officer ordering the Court.
 268. Promulgation of Sentences.
 269. Irregularities of procedure to be made known.
 270. Duties of Judge Advocate in regard to the Record.

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 271. Amendment of defects of Record.
 272. Re-assembly of Court.
 273. How clerical errors are to be corrected.
 274. Amendment of omissions in the Record.
 275. } How the Record is to be written
 276. } and made up.

SEC. 139. A Naval General Court-Martial may be appointed or convened by the President of the United States, the Secretary of the Navy, or by the Commander-in-chief of a fleet or squadron; but in the waters of the United States, a Commander-in-chief of a fleet or squadron is not to convene a general Court-Martial unless by express authority of the President of the United States.

SEC. 140. General Courts-Martial may consist of any number of commissioned officers from five to thirteen, inclusive.

SEC. 141. As many Officers shall be summoned on every such Court as may be convened without injury to the service, and, if it can be avoided, not more than half the members of the court shall be inferior in rank to the officer to be tried.

SEC. 142. A statement that "no other officers than those named can be assembled without manifest injury to the service" is to be added to the order convening a General Court-Martial, and it is to be regarded as an essential part of such order as showing that the requirements of the statute relating both to number and rank have been complied with as far as the interest of the service would allow.

SEC. 143. It is to be understood, however, that the limitation with reference both to the number and rank of the Members of a General Court-Martial is discretionary with the Appointing Power, and that his decision thereupon is conclusive.

SEC. 144. In detailing Officers for a General Court-Martial for the trial of a Medical, Pay, Marine, or Engineer Officer, it is deemed proper if the exigencies of the service will permit, that at least one-third of the Court should be composed of officers of the same Department or Corps as the person to be tried.

Rule in regard to
Members who
may be subject
to challenge. SEC. 145. No officers should be named in the precept as Members of a General Court-Martial against whom either the Accused or the Prosecutor can reasonably object when called upon to exercise their privilege of challenge.

Senior Member to
preside. SEC. 146. The Senior Officer in rank of a Naval Court-Martial presides in virtue of his rank.

Act of July 17,
1862, art. 11.
Duties of Presid-
ing Officer. SEC. 147. Besides his duties and privileges as Member, he is the organ of the Court and is empowered to keep order and to speak and to act for the Court in each case where the rule has been prescribed by law, regulation, or its own resolution. In all deliberations of the Court the equality of the several members is to be recognized; when, therefore, a question shall be raised in the course of the proceedings, the President shall put it to the Court and it shall be decided by the majority.

Equality of Mem-
bers to be rec-
ognized.

Contempt to
Court. SEC. 148. General Courts-Martial may lawfully imprison at their discretion, for a term not exceeding two months, witnesses who refuse to give evidence, prevaricate, or behave with contempt to the Court.

Act of July 17,
1862, art. 13.

Perjury and sub-
ornation there-
of. *Ibid.* SEC. 149. Persons who willfully give false evidence upon oath before a General Court-Martial, or corruptly suborn others to do so, "shall and may be prosecuted in any court of justice in the United States," and punished according to the laws in such cases.

Responsibility of
Members for
abuse of power,
&c. SEC. 150. Although the proceedings of a Court-Martial, duly constituted and organized, cannot be dictated to or interfered with by the highest military authority, yet the Members thereof are collectively and individually responsible to the civil judicature for any abuse of power or illegal proceedings.

Punishment of
Members. SEC. 151. There is no power conferred on a Court-Martial by the Naval Articles of War to punish its own Members. For disorderly conduct, a Member is liable as in other offenses against the discipline of the service.

Proper treatment
of persons un-
der trial. SEC. 152. The President of the Court shall be responsible that all persons called before it are treated in a becoming manner, and in all cases of impropriety, whether in language or behavior, will, if necessary, report the offender to the authority convening the Court.

Suspension of
proceedings. SEC. 153. When the proceedings of any General Court-Martial have commenced, they are not to be suspended or

delayed on account of the absence of any of the members so long as five or more are assembled; but the Court are required to sit from day to day, Sundays excepted, until sentence be given, unless temporarily adjourned by the authority which convened the Court, to whom report is always to be made when the Court shall be reduced to less than five members.

Act of July 17,
1862, art. 16.

SEC. 154. No Member of a Court-Martial, after the proceedings have begun, may absent himself, unless in case of sickness, or orders to go on duty from a Superior Officer, under penalty of dismissal from the Service.

Absence of Mem-
bers.

Ibid.—Art. 16.

SEC. 155. A Member of a Naval General Court-Martial who, after the commencement of a case, shall, from any legal cause, absent himself, cannot be allowed to sit again in that particular case until after having strictly complied with the following requirements of the law: When he is ready to resume his seat, every Witness who shall have been examined during his absence must be recalled by the Court, and the recorded testimony of each Witness so examined must be read over to him, and such Witness must acknowledge the same to be correct, and be subject to such further examination as the said Member may require. A full entry must be made in the record of all the proceedings in compliance with the above rule.

Legal absence of
Members.

Ibid.—Art. 17.

Proceedings on
resuming seat.

Ibid.—Art. 17.

SEC. 156. The absence of the Judge Advocate at any time during the progress of the trial does not invalidate the proceedings, but is to be avoided, of course, if possible.

Absence of the
Judge Advocate.

SEC. 157. The custody of a prisoner belongs to his immediate Commanding Officer as part of his command, and neither a Court-Martial nor its Judge Advocate has any authority over the person of a prisoner, except when he is actually before the Court for trial or as a witness.

Custody of the
prisoner.

SEC. 158. When a prisoner in close arrest shall be required to be brought before the Court, the order will be sent by the President of the Court to the Commanding Officer of the vessel to which the prisoner belongs, through the Provost Marshal, who shall be responsible for all such prisoners in their transit to and from their place of confinement, and for their safe return to the proper custody, when their presence is not required by the Court.

Responsibility of
the Provost
Marshal.

SEC. 159. The President of a General Court-Martial may order an Officer of the Navy, not above the grade of Lieu-

Appointment of
the Provost
Marshal.

tenant or an Officer of the Marine Corps not above the grade of Captain to serve as Provost Marshal of the Court. Besides the duties named in the preceding section, the Provost Marshal will serve notices to the witnesses, and be in attendance generally as Police Officer of the Court.

SEC. 160. In the case of a trial of a Petty Officer, or person of inferior rating of the Navy, or of a Non-commissioned officer, musician, or private of marines, the person to act as Provost Marshal may, if the President of the Court think proper, be either a Petty Officer of the Navy or a Non-commissioned officer of Marines.

Appointment of
Judge Advocate.

SEC. 161. Hereafter Judge Advocates of all Naval General Courts-Martial, whether convened in the United States or abroad, will be appointed by the Secretary of the Navy only, who will select a competent Commissioned Officer to perform the important and responsible duty of Judge Advocate in each foreign fleet or squadron.

Provisional ap-
pointment of
Judge Advocate
by Com-
manders-in-
chief.

SEC. 162. The Judge Advocate so appointed will be detailed by the Commander-in-chief for duty on each Court requiring his services, and will be named, as usual, in the precept convening the Court. Should he be disabled by illness or other sufficient cause from performing his duty, the Commander-in-chief will select a competent officer to act temporarily as Judge Advocate of the fleet or squadron.

Duties of Judge
Advocate be-
fore the assem-
bly of the Court.

SEC. 163. Upon being notified that a Court is to convene and furnished with such papers and instructions as shall be considered necessary for his guidance, the Judge Advocate shall ascertain that the Accused has received a true copy of the charges and specifications preferred against him.

List of witnesses.

SEC. 164. The Judge Advocate shall call upon the Accused for a list of the Witnesses he wishes to have summoned in his defense, and shall give him a list of the Witnesses who are to appear against him.

Rule regarding
the summoning
of witnesses.

SEC. 165. He shall summon, through the customary channel, every person whose testimony is in any shape necessary, whether to the prosecution or the defense; but, unless by order of the Court, will not summon any Witnesses at the expense of the United States, nor any officer of the Navy, unless satisfied that his testimony is material and necessary to the ends of justice.

SEC. 166. If a Court of Inquiry has been held in the same case its proceedings must be transferred to the Judge Advocate for examination, in order that all Witnesses whose names appear on the record, and are necessary to the trial, shall be summoned, if practicable. (*See Act of July 17, 1862, Article 24.*)

Proceedings of Court of Inquiry to be examined.

SEC. 167. The Judge Advocate is especially to instruct himself in all the circumstances of the case, and by what evidence the charges are to be sustained; and to this end it is important that he should inquire what persons have knowledge of the facts, and to what particulars they can bear testimony.

Inquiries to be made by Judge Advocate.

SEC. 168. It is proper that he should prepare, in writing, a short analysis or plan for his own guidance in the conduct of the trial and examination of Witnesses.

Analysis or plan.

SEC. 169. It is the duty of the Judge Advocate, under the direction of the Court, to record its proceedings, and to administer the requisite oath to the Members.

Judge Advocate as Recorder of the Court.

Oath to members.

SEC. 170. To advise the Court in all matters of form and law. On every occasion when the Court demands his opinion, he is bound to give it freely and fully, and even when it is not requested to caution the Court against any deviation from any essential form in their proceedings, or in violation of material justice.

Act of July 17, 1863, art. 12.

Judge Advocate as adviser to the Court.

SEC. 171. Either of the parties before the Court has the right to the opinion of the Judge Advocate, either in or out of the Court, on any given question of law arising out of the proceedings.

Right of parties to Judge Advocate's opinion.

SEC. 172. It is the essential duty of the Judge Advocate, on receiving charges and specifications for prosecution, to examine them critically, and on discovering in them any technical inaccuracies, to advise the Court, in order that if they deem such charges and specifications faulty, they may send them back, with their objections, to the power ordering the Court before the arraignment of the Accused.

Examination of charges and specifications.

SEC. 173. Should the Convening Power authorize the Judge Advocate to amend the legal defects of the charges or specifications before the Accused is called to plead to them, it is to be understood that in doing so the Judge Advocate is held strictly responsible that the facts are not changed nor the

Amendment of legal defects of charges.

Accused to be informed of alterations in the charges.

legal responsibilities weakened. In every such case he will be careful to communicate to the Accused any alterations in the charges which were delivered to him at the time of his arrest as soon as possible after such alterations shall have been made.

Responsibility of Judge Advocate.

SEC. 174. The Judge Advocate, if an officer in the Navy, in his military character as an officer, is responsible to the Authority who Convenes the Court or revises the proceedings, for the proper discharge of his duty.

Rule in regard to the Prosecutor and the Accuser.

SEC. 175. The Judge Advocate is the official Prosecutor of the United States, and when the Military Accuser is allowed to be present in Court, it is merely for the purposes of material justice and as assistant to the Judge Advocate.

Whatever observations the Accuser has to make or questions to propose must be stated privately to the Judge Advocate, who, if he think the remarks just, will avail himself of the suggestions of the informant.

Duty of Judge Advocate to the Accused.

SEC. 176. Justice being the object for which a Court is convened, the Judge Advocate, though he is not for a moment to forget his duties as Prosecutor, will, at all times, and especially when the person arraigned shall appear either inexperienced or ignorant, prevent him from advancing anything which may tend either to criminate him or prejudice his cause, and should he have no competent adviser, is also to see that no illegal testimony is brought against him and to direct him how to present to the Court, in the most effective light, the facts upon which his defense may hinge.

Improper evidence and irrelevant matter to be objected to.

SEC. 177. It is the Judge Advocate's most particular duty to object to the admission of improper evidence, and to point out to the Court the irrelevancy of any matter which may be adduced, which does not tend to prove, either directly or consequently, the charge under investigation.

Disregard of the opinion of the Judge Advocate by Court.

SEC. 178. Should it happen that the Counsel of the Judge Advocate be disregarded by the Court, he will be allowed to enter his opinion upon the record. Under such circumstances, it is also proper for the Court to record the reasons for its decision. The minutes of opinion and decision are made for the information of the Revising Power, who should have the error or wrong, on whichever side it may be found, brought fairly under his consideration. In such cases, neither the Judge Advocate nor any Member of the Court has any right to enter a protest on the record of proceedings.

Rule in regard to recording protests.

SEC. 179. The necessary guard and a sufficient number of Detail of guard. Orderlies in waiting will be detailed by the Commanding Officer of the vessel or station on board of or at which the Court shall be ordered to convene.

SEC. 180. Under the same authority the Judge Advocate Place of assembling prepared. will see that a suitable place is provided for the accommodation of the Court, and that it is supplied with writing materials for their use.

SEC. 181. Courts-Martial shall be assembled and held in a Where the Court shall be held. convenient part of the ship or Navy Yard, and be public, and all persons, excepting such as are intended to give evidence, shall be admitted. Court to be public.

SEC. 182. The time and place for assembling a Court-Martial, being distinctly stated in the order for convening, can only be changed by the Appointing Authority, whose sanction must be obtained, should circumstances render a change necessary or expedient. Time and place of assembly.

SEC. 183. No Naval General Court-Martial or other assembly of a judicial character shall be ordered or permitted to assemble or conduct any part of its proceedings in any place subject to foreign jurisdiction. Courts not to be held on shore in foreign dominions.

SEC. 184. When a General Court-Martial shall assemble in conformity to order, the person to be tried shall be introduced and the precept for convening the Court and the appointment or warrant of the Judge Advocate shall be read by the Judge Advocate in presence of the Accused. Accused brought into Court.

SEC. 185. In each and every case tried, the order convening the Court, or a copy thereof certified by the Judge Advocate, and, also, the original charges and specifications duly signed and approved, after having been read, are to be appended to the record. Precept and charges to be appended to the record.

SEC. 186. The Accused, when brought into Court, though up to that time in close confinement, and even in irons, must appear unfettered and without bonds, unless violence or escape be apprehended. Accused to appear without bonds.

SEC. 187. The Accused and the Judge Advocate have the mutual privilege of challenge, and it is the duty of the Judge Advocate invariably to ask the Accused if he objects to any Member of the Court appointed to try him. As a general rule, whatever objection either party may make, should be decided upon before the Court shall be sworn; Privilege of challenge.

Privilege of challenge.

but the Accused is never to be precluded from challenging, on sufficient cause, any of the Members after the Court shall be sworn, if he had no opportunity of making his objection before that form had been gone through. The objection, and the decision of the Court thereupon, must be recorded.

Cause of objection must be assigned.

SEC. 188. The party objecting must assign his cause of challenge, which is to be regularly and specifically entered on the proceedings.

Explanation and withdrawal of challenged member.

SEC. 189. The Member objected to will be allowed to withdraw, after offering any explanation he may think necessary, (which is to be recorded,) and the Court will proceed to deliberate and decide on the validity of the objection.

Action of Court when reduced in number below five.

SEC. 190. Should the objection be pronounced valid, and the Court be thereby reduced below the legal number, the Court will be adjourned, and a report be made to the Convening Authority.

Decision of Court conclusive.

SEC. 191. The challenger cannot enforce his challenge in opposition to the opinion of the Court.

SEC. 192. The Judge Advocate cannot be challenged on any grounds.

Judge Advocate and Court sworn.

Act of July 17, 1862, art. 12.

SEC. 193. After the question upon the admission of the grounds of challenge shall have been decided, the oaths or affirmations prescribed by law shall be administered in the presence of the Accused: First, by the President of the Court to the Judge Advocate; second, by the Judge Advocate to the Members of the Court.

The record to show that the prescribed oaths were administered.

SEC. 194. Whereupon the Judge Advocate will enter on the record, fully and explicitly, that the Judge Advocate was duly sworn according to law, by the President of the Court, in presence of the Accused; and that each of the Members of the Court was duly sworn according to law, by the Judge Advocate, in presence of the Accused.

SEC. 195. Until a Court is duly sworn according to law, it is incompetent to perform any judicial act.

Employment of reporter or interpreter.

SEC. 196. Whenever it shall be necessary to employ a Clerk or Reporter, or an Interpreter to assist in a trial, the same rules and instructions given in Chapter III, and comprised in sections from 68 to 72, inclusive, are to be observed in regard to them.

SEC. 197. Whenever more persons than one shall be arraigned upon different charges, and tried by the same Court, the Members are liable to be challenged and the Court must be resworn at the commencement of each distinct trial. The oath of the Court is to "try without prejudice or partiality the case," not the cases, now depending.

SEC. 198. If either of the parties shall desire a postponement of the trial, the motion should, if possible, be made before the arraignment. But the application to suspend the proceedings of a Court for a longer period than from day to day must be made to the Officer convening the Court, who alone has authority to grant the request.

SEC. 199. The Accused is entitled to Counsel as a right, and the Court cannot with propriety deny him the assistance of a professional or other friend; but no person is on any account to be permitted to address the Court, or to interfere in any manner with its proceedings, except the parties themselves. All communications, motions, or questions are to be made in writing, and in the name of the Accused. Where the Accused has no legal adviser the Court may, at his request, select some officer within reach to assist him. This can only be done with the consent of such officer, a military Court having no power to compel an officer to act as Counsel for the Accused.

SEC. 200. The Judge Advocate, for the convenience of the Court, will place upon the table three or four authentic copies of the charges and specifications on which the Accused is to be arraigned, and, also, a list of the witnesses it is intended to produce, with a general statement of the facts expected to be proved by such. The names of the witnesses subsequently required and summoned can be added to this list at any stage of the trial.

SEC. 201. Before entering upon the trial, the Court should be cleared and the charges and specifications audibly read by the Judge Advocate to ascertain that they are specific, and to discuss any doubts which may arise in the minds of the Court, or of the parties to the trial, with regard to the competency of the Court's jurisdiction, the relevancy of the charges and specifications, or, if an alleged criminal offense is to be investigated, to see that the facts specified are described in such a legal manner as will justify the Court to award, on conviction, the punishment prescribed by law for the offense.

Objections to charges to be recorded and reported to the proper officer. SEC. 202. Should any doubts arise, or objection be made to the charges and specifications by the Court or either of the parties, the proceedings, and the decision of the Court thereon, must be regularly and fully recorded and referred without delay to the officer by whom the charges were approved and ordered to be investigated, whose consent must be obtained before any alterations shall be made in the charges and specifications by the Judge Advocate or any other person.

Arraignment of the Accused. SEC. 203. The Court, having been regularly constituted, and every preliminary form gone through, shall be opened and the Judge Advocate, after reading aloud the charges and specifications against the Accused, will address him by his name and designation, and ask him whether he is guilty or not guilty of the charges and specifications just read.

Proceeding if the Accused plead guilty. SEC. 204. Should the Accused plead "guilty," the Court shall warn him that he thereby precludes himself from the benefits of a regular defense. After this warning, should the Accused persist in his plea, the Court, before proceeding to deliberate and determine upon the sentence, will allow him to urge anything in extenuation of his conduct, to call witnesses to character, and offer any other evidence of a strictly palliative nature; but as by the plea of guilty everything alleged is admitted, no evidence shall be taken by the prosecution. The Judge Advocate has, of course, the right to cross-examine witnesses produced by the Accused for the purpose of mitigating or making favorable explanations of his conduct.

Plea of "not guilty;" standing mute. SEC. 205. If the Accused plead "not guilty," or stand mute, or if, after making objections to the Court which they overrule, he refuses to offer evidence or to make any defense, the trial will proceed.

Arraignment and reply to be recorded. SEC. 206. The questions constituting the arraignment, and the answers to them, if any be given, must be distinctly recorded.

Plea in bar of trial. SEC. 207. Pleas in bar of trial are sometimes submitted by the Accused for the consideration of the Court. These may be either to the jurisdiction of the Court, or special pleas which go into the merits of the case. Whatever the plea may be it must be fully recorded on the proceedings.

Written statement. SEC. 208. If a written statement of the plea be handed into the Court, it shall be read by the Accused and then appended to the proceedings.

SEC. 209. If the plea be admitted as valid, an extract of the proceeding of the Court shall be sent to the authority who convened the Court, for his information and instructions; but if the plea be considered invalid it shall be duly recorded and the trial shall proceed, and the decision of the Court be communicated to the Accused on the Court being opened to the public.

Proceeding when the plea is pronounced to be valid.

SEC. 210. The Accused having pleaded to the charges and specifications, the President of the Court shall caution all witnesses on the trial to withdraw and not to return until they are officially called upon to be sworn. Witnesses are to be also warned that they are not to converse on any matter pertaining to the pending trial. It is proper in the outset of each day's proceedings that the warnings to withdraw should be repeated to all who are cited as witnesses, and may chance to be present.

Rules in regard to witnesses.

Daily warning to witnesses.

SEC. 211. When a witness shall be produced, should either of the parties take exception to his competency, it must be stated in open Court, and all such exceptions, together with the decisions of the Court thereupon, must be fully recorded on the proceedings.

Exception to the competency of a witness.

SEC. 212. As a general rule exceptions to the competency of a witness should be stated before he is sworn; but at whatever stage of the trial the incompetency of a witness appears, the Court may arrest the evidence and disregard his testimony.

When the exception should be stated.

SEC. 213. The oath or affirmation prescribed by law shall be administered to all witnesses before General Courts-Martial by the President of the Court, in open Court, and in presence of the Accused.

All witnesses to be sworn.

Act of July 17, 1862, art. 14.

SEC. 214. The particular form in which the prescribed oath or affirmation shall be taken is not essential; all witnesses, therefore, shall be sworn according to the peculiar ceremonies of their own religion, or in such manner as they may deem binding on their own consciences.

Form of administering oaths.

SEC. 215. Should it be necessary to call the President of the Court as a witness, the oath or affirmation shall be administered to him by the Member next in rank.

The presiding officer sworn as witness.

SEC. 216. After each witness shall be "duly sworn according to law," the Judge Advocate shall enter a minute on the proceedings that this has been done, and having

Swearing of every witness to be fully recorded.

ascertained the full name, rank, and distinctive condition of the witness, and the ship or service to which he belongs, shall record them at length, in order to fix his identity.

Reading charges and specifications to witness. SEC. 217. Before the witness shall be examined the general charge may be read to him if the Court think proper; but when the specifications are so worded as to instruct the witness how to answer, or to make known to him the minute facts of the case, they are not to be read to him.

Questions to witness to be in writing. SEC. 218. Questions to be propounded to a witness shall be reduced to writing; and should any objection be made to any proposed question or to the reception of any testimony, the Court shall proceed at once to determine the same; and if they shall decide that such question shall not be put, or against the reception of such testimony, the question or matter rejected, shall be described or recorded in full, in the minutes of the proceedings, as the Court may decide.

Court to decide on questions of testimony.

How evidence is to be recorded. SEC. 219. All evidence whatever is to be recorded on the proceedings in the order in which it is received by the Court, and as nearly as possible in the words of the witness.

Rules in regard to documentary evidence. SEC. 220. When documentary evidence shall be offered to the Court, it must be in public session, and the evidence, in full, or an authenticated copy thereof, must be annexed to or form part of the record.

Testimony of witness read to him. SEC. 221. When the examination of a witness shall be closed, the whole of his testimony shall be read over to him in order that he may correct or amend it.

A witness may, after having left the court, even upon a subsequent day, be readmitted, on request, for that purpose.

Erasure or obliteration not to be admitted. SEC. 222. In recording corrections or amendments offered by a witness, no erasure or obliteration is, under any circumstances, to be admitted. The fact that the witness desired to correct or amend his testimony, and any remark or explanation he may have to make, are to be separately and distinctly entered on the proceedings.

Corrections to be separately recorded.

Withdrawal of witness to be recorded. SEC. 223. When the Court have done with a witness he will be directed to retire and a minute entered on the record, thus: "The witness withdraws," to show that two witnesses were not in Court at the same time.

SEC. 224. The order in which witnesses are to be examined is as follows: After having been duly sworn, the witness shall be examined in chief by the party who produces him. The opposite party may next cross-examine him, and in case of new matter being introduced on the cross-examination, the party calling him may re-examine into that matter, and, finally, the Court may put such questions to the witnesses as they may deem necessary.

Order in which
witnesses are
examined.

SEC. 225. The evidence on the part of the prosecution shall be first taken, and when the prosecution shall be closed a minute to that effect must be entered on the record, after which no further evidence on the part of the prosecution can be admitted.

Prosecution.

SEC. 226. Witnesses are examined for the defense in the same order as those presented on the part of the prosecution. The Prosecutor cross-examines and the Accused re-examines to the same extent allowed to the Prosecutor.

Defense.

SEC. 227. When the Accused shall have closed his examination of witnesses he shall be at liberty to make his defense in writing against the charges and specifications, which defense he shall submit to the Court for their inspection before it is publicly read; and if, in the opinion of the Court, it shall contain anything disrespectful, they may prevent that part from being read; but it shall be filed with the proceedings, if the Accused desire it, and he will be held responsible for the same.

Rules in regard
to the written
defense.

SEC. 228. When the defense shall be closed a minute to that effect is to be entered on the proceedings, thus: "The defense is here closed;" after which no evidence on the part of the defense can be admitted.

Defense closed.

SEC. 229. The Judge Advocate as Prosecutor has the right to reply to the defense, and should be allowed time for that purpose if he require it, but is not to adduce fresh evidence unless *new matter* shall have been introduced by the defense. What is new matter must be judged of by the Court, and should they allow new witnesses to be introduced, the cross-examination of such, according to the extent of the examination in chief, will be permitted to the Accused.

Reply of Judge
Advocate.

Cross-examina-
tion of new wit-
nesses.

SEC. 230. The Court is at liberty at any stage of the proceedings, before finding, to recall a witness; the parties must, however, be present.

Court may recall
witnesses.

- Trial finished. SEC. 231. When the Prosecutor and the Accused shall have laid their respective cases before the Court, the trial is finished, which circumstance shall invariably be recorded on the proceedings.
- Testimony and defense read. SEC. 232. The Court will then be closed, and the Judge Advocate will proceed to read over such parts of the testimony as may be indicated by the Members, together with the defense of the Accused. When the Court shall have sufficiently examined the evidence and the defense, the Judge Advocate will put the question upon each specification of each Charge, beginning with the first, whether the specification is "proved" or not proved or "proved in part," the junior Member voting first, and the rest in the inverse order of rank, each Member writing "proved" or "not proved," or "proved in part," and if in part, what part, over his signature; and each shall hand his vote to the Judge Advocate, who, when he has received all the votes, shall read them aloud, and in doing so is to be careful not to disclose whose vote he is reading. No written minute of the votes shall be preserved unless so ordered by the unanimous voice of the Court. The Court shall next deliberate and consider, until a majority shall agree upon a finding, which shall then be recorded..
- Individual votes not to be disclosed. Finding on specification. SEC. 233. When the Members shall have thus voted upon all the specifications of any charge, the question shall then be put upon the charge to each Member, "Is the Accused guilty of this charge?" "guilty in a less degree than charged?" or "not guilty?" And then the Members, in the order as above stated, shall write "guilty," "not guilty," or "guilty in a less degree than charged," and in what degree, over their signatures, and hand them to the Judge Advocate, who shall, after receiving all the votes, read them aloud, and record the general result.
- Vote on the charges. SEC. 234. When the decision on one charge shall be completed, the Court will then proceed to the next charge and specifications, until votes shall have been taken and recorded, as above directed, upon all the charges and specifications.
- Vote on the Punishment. SEC. 235. When the Court shall have voted upon all the charges, if the Accused shall have been found guilty, or guilty in a less degree than charged, upon any one of them, by the number of Members which the law may require in the particular case, they shall next proceed to vote upon the punishment to be inflicted.

In this case each Member shall, in the order before directed, write down and subscribe the measure of punishment which he may think the Accused ought to receive and hand it to the Judge Advocate, who shall, after receiving all the votes, read them aloud.

Vote on the punishment.

SEC. 236. The majority in every case binds the minority; the opinion of the majority is the opinion of the Court, except when the law requires the concurrence of two-thirds of its Members. In all such cases the record must explicitly show that two-thirds of the Court concurred in the sentence.

Opinion of the Court defined.

SEC. 237. If the requisite majority shall not have agreed on the nature and degree of the punishment to be inflicted, the Judge Advocate shall proceed in the following manner to ascertain which of the different votes will obtain the assent of the requisite number of Members: He shall begin with the mildest punishment which shall have been proposed, and, after reading it aloud, shall ask the Members, in the order hereinbefore prescribed, "Shall this be the sentence of the Court?" and every Member shall vote, and the Judge Advocate shall note the votes.

Proceedings when the required majority have not agreed.

SEC. 238. In case the proper number shall not vote in favor of the punishment proposed on the first vote, he shall then take the next lowest proposed punishment, and proceed to take a vote as before directed, and shall thus proceed until a proper majority shall be obtained for some sentence, either proposed at first or subsequently.

Vote on the next lowest punishment proposed.

SEC. 239. The Judge Advocate, in collecting the votes of a Court-Martial, must bear in mind that the Court are bound to exhaust the whole charges that come before them by expressly acquitting or convicting the Accused of each allegation that is contained in them.

Court must acquit or convict Accused of every allegation.

SEC. 240. It is made by law the duty of Courts-Martial, in all cases of conviction, to adjudge a punishment adequate to the character and nature of the offense committed. The law has never intended to vest in Courts-Martial the power to pardon offenses or to award a nominal punishment equivalent to a pardon. The power to pardon, remit, or mitigate, is expressly vested in the President of the United States, or the Officer authorized to convene the Court. The exercise of this power by a Naval General Court-Martial will subject the individual Members thereof to the charge of violating the law.

Adequate Punishment.

Act of July 17, 1862, art. 21.

Recommendation
to clemency.

Ibid.

SEC. 241. If mitigating circumstances have appeared during the trial, which could not be taken into consideration in determining the degree of guilt found by the verdict, the Court can only avail themselves of such circumstances as adequate grounds for recommending the prisoner to mercy.

Where the pen-
alty is designa-
ted by statute.

SEC. 242. In all cases where a statute has designated a penalty for a particular offense, none other than that particular penalty can be imposed; and the Court must pronounce the sentence which the law requires, whenever the fact is proved.

Punishment of
death.

Act of July 17,
1862, arts. 3, 4,
and 5.

SEC. 243. The punishment of death can only be awarded against persons subject to the Articles for the Government of the Navy, for the crimes specified in Articles 3d, 4th and 5th of those Articles; for it is obvious that where the word "death" is omitted, the power to punish capitally is excluded.

Sentences, how
determined.

Act of July 17,
1862, art. 19.

SEC. 244. All sentences of Courts-Martial which extend to the loss of life, require the concurrence of two-thirds of the Members present, and cannot be carried into execution until confirmed by the President of the United States.

Substitution of
imprisonment
for death pen-
alty.

Ibid.—Art. 6.

Prisons.

SEC. 245. In every case where a Naval Court-Martial is authorized to adjudge the punishment of death, it may sentence the person convicted to imprisonment for life, or for a stated time at hard labor, and such sentences of imprisonment at hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or the use of which shall be allowed by the legislature of a State.

Sentences to hard
labor restricted
to capital cases.

SEC. 246. It must be borne in mind that the power given to Courts-Martial to punish by imprisonment at hard labor can be exercised only in the case where the law expressly authorizes it, namely, as a substitute for death.

Punishment of
offenses not
specified in the
Articles.

SEC. 247. Sentences for offenses not provided for by special penalty, but left to be determined by the discretion of the Court, must be neither cruel nor unusual, but in accordance with the common law of the land or the custom of war in like cases.

Sentences to sus-
pension from
rank, duty, or
pay.

SEC. 248. Sentences to suspension must state distinctly whether from rank or duty only, and whenever they include forfeiture of pay, it shall be the duty of the Court, in

the case of commissioned officers, to state the rate of pay and time of such forfeiture, and, in all other cases, to fix the amount of pay so forfeited, stating it in dollars and cents.

SEC. 249. Any punishments authorized to be inflicted by Summary Courts-Martial may also be inflicted by any General Court-Martial. Act of March 2, 1855, sec. 10.

SEC. 250. A sentence of imprisonment must express distinctly for what period the same shall continue. Terms of imprisonment to be defined.

The term of confinement is understood to begin from the promulgation of the sentence. Should an unusual time elapse between the approval and promulgation of the sentence, such, beyond the time necessary for its communication, is to be counted as part of the punishment.

SEC. 251. In the case of a sentence to solitary confinement or confinement to low diet, the time named in the sentence must, of course, be completed with the conditions required. Solitary confinement.

SEC. 252. When the Judge Advocate shall have taken the votes of all the Members on all points, he shall draw up the finding and sentence, which, being approved of by the Court, must be recorded in the Judge Advocate's own handwriting. Drawing up finding and sentence. Record of finding and sentence.

SEC. 253. As the oath taken by every Member of the Court and by the Judge Advocate provides for the concealment of the vote or opinion of each particular Member, the Judge Advocate shall be careful that it does not appear on the record either that the votes of Members in regard to the finding or sentence were unanimous, or what number of them voted for any particular question, with the exception to be found in section 244 of these regulations. Act of July 17, 1862, art. 12. Unanimity of votes not to be recorded.

SEC. 254. In drawing up the sentence it must be specified precisely how far the accused has been found guilty of each charge, and also the exact nature and degree of punishment which the Court shall have awarded. Degree of guilt to be specified.

SEC. 255. The sentence having been recorded, the proceedings in each separate case tried by the same Court are required to be signed by all the Members who may be present when the judgment shall be pronounced, and also by the Judge Advocate. Authentication of judgment. Act of July 17, 1862, art. 22.

Authentication
of Record when
the trial is in-
complete.

SEC. 256. In the event that a Court be dissolved by the Convening Authority for any sufficient cause, before proceeding to judgment, that fact, together with the proceedings of the Court up to its dissolution, must be recorded and authenticated in the same manner as if the trial had been completed.

Recommendation
to clemency.

Ibid.—Art. 21.

SEC. 257. After the sentence of a Court shall have been decided on, it is competent for any of its Members to move that the Accused be recommended to the clemency of the revising power, which recommendation is not to be inserted in the body of the sentence, but recorded with the reason therefor immediately after the signatures of the Court and Judge Advocate to the sentence, and must be signed by the Members concurring in it.

Completion of
record.

SEC. 258. The record, when finished and duly authenticated, must be forwarded by the President of the Court to the Authority who convened it. Whether the Court shall adjourn to the next day or, having other cases before it, take up a new one, these facts are to be recorded, that the various trials may appear in a continuous form. The record, made complete to this point, will be signed by the Judge

Where other tri-
als are held by
the same Court.

Record to be sent
to Convening
Authority.

Advocate, attested by the President, and then sent to the Convening Authority.

Report of Presi-
dent of the
Court.

SEC. 259. When the Court shall have finished the trial of all the cases sent to them for adjudication, the President of the Court will send a letter to that effect to the Officer ordering the Court, signed and attested as in the previous case.

The Officer, only,
who ordered,
can dissolve
the Court.

SEC. 260. The Officer by whose order a General Court-Martial, a Summary Court-Martial, or Court of Inquiry, has been convened, is the only proper person to dissolve the Court. When, therefore, any Court shall have concluded the trial of all cases actually referred to it, and transmitted, severally, the records of its proceedings in each to the Officer by whose order it was convened, it will await the further orders of that Officer, whose duty it shall be, as soon as such records are received, to revise the same, and either to return them to the Court for its reconsideration, or to dissolve the Court; and, after having dissolved the Court, to forward such records to the Department as soon as practicable.

Court to await
final orders.

Confirmation and
execution of
sentence.

Act of July 17,
1862, art. 19.

SEC. 261. No sentence of a General Court-Martial can be carried into execution until after the whole of the proceedings have been laid before the Officer who appointed the Court, or, according to the circumstances of the case, shall

have been submitted through the Secretary of the Navy to the President of the United States for his confirmation and orders.

SEC. 262. The Authority who ordered the Court is competent to direct it to reconsider its proceedings and sentence for the purpose of correcting any mistake which may have been committed. Revisal of proceedings.

SEC. 263. It is not in the power of the Revising Authority to compel a Court to change its sentence where, upon being reconvened by him, they have refused to modify it, nor directly or indirectly to enlarge the measure of punishment imposed by sentence of a Court-Martial. Court entitled to a free exercise of judgment.

SEC. 264. The proceedings must be sent back for revision before the Court shall have been dissolved.

SEC. 265. When a Court shall be ordered to revise their proceedings, new testimony is not to be brought forward in any shape; but the revision will be strictly confined to a reconsideration of the matter already recorded on the proceedings, no part of which is to be amended, altered, or annulled in any way. New testimony precluded on revision.

SEC. 266. During a revision of proceedings, an entirely separate record must be kept, to which the order for reassembling must be affixed, and a full entry made of the proceedings, verified in the ordinary manner by the signatures of all the Members of the Court and the Judge Advocate, and transmitted to the Reviewing Officer for his approval. Record of revisal to be kept separately.

SEC. 267. Where the law does not authorize the Officer who convened the Court to confirm and execute the sentence, he has still absolute power to disapprove and annul it. Should the sentence be one which he is not empowered finally to confirm and execute, but which he thinks ought to be confirmed in transmitting the proceedings to the authority having power in the case, he should subscribe a formal approval of the same in or upon the record, in evidence that the power of disapproval is not exercised. Powers of the Officer ordering the Court.

SEC. 268. The sentences of all Courts-Martial which shall be approved on a foreign station will be communicated in a General Order to the Commander of each vessel in the squadron, that they may be made public; and when approved in the United States, they shall, in the same manner and for the same purpose, be communicated to the Commander of each vessel or station in the United States. Act of July 17, 1862, art. 19.

Irregularities in procedure to be made known.

SEC. 269. Should the proceedings of any Court-Martial be disapproved for any informality or irregularity of the Court, the particular irregularity or informality will be made known in general orders, so as to prevent, if possible, a recurrence of similar irregularities.

Duties of the Judge Advocate in regard to the Record.

SEC. 270. The Judge Advocate shall take special care that the entire proceedings of a Court upon a trial or in any session shall be fully set forth in the record. All orders, motions, votes, or rulings of the Court itself; all motions, propositions, objections, arguments, statements, &c., of the Accused and Judge Advocate; the entire testimony of each witness given in his own language, and as nearly verbatim as possible; and, in short, every part and feature of the proceedings material to a complete history of the case, and to a correct understanding of every point thereof by the Reviewing Officer, shall be recorded at length. The remarks and arguments of Members of the Court in discussing interlocutory questions, or in connection with their final judgment, are not necessary to be detailed as part of the final proceedings.

Amendment of defects in the record.

SEC. 271. In the event of a fatal defect or omission in the record, the Court, if it has not been dissolved, may be reconvened to make the necessary amendment, provided the facts will warrant its being made.

Reassembling of Court.

Persons required to be present.

SEC. 272. When a Court is reconvened for a substantial amendment, the reconvening order must be spread on the record, which shall also show that at least five Members of the Court, the Judge Advocate, and the Accused were present, and that the amendment was then made to conform to and express the truth in the case. But a mere clerical error may be amended by the Court without having the Accused present.

How clerical errors are to be corrected.

SEC. 273. Clerical errors in a record are not to be corrected in an informal manner by erasure or interlineation. The legal procedure is for the proper Officer to reconvene the Court, calling its attention in the order for reconvention to the error needing correction; and for the Court, on reassembling, to continue the record by a report of the proceedings of the additional session in which the amendment is made.

How omissions in the record are to be amended and attested.

SEC. 274. When a Court shall be reconvened for the purpose of amending omissions in its record, the order reconvening it must be annexed to the proceedings; and these

are to be entered in full, verified in the ordinary manner by the signature of the President, and transmitted to the Reviewing Officer for his approval.

SEC. 275. The record of all Naval Courts-Martial shall be clearly and legibly written without erasure or interlineation, leaving a margin of one inch at the left side and at the top of each leaf, through which last margin the leaves are to be stitched. Every page shall be numbered and written on; the odd numbered pages from top to bottom, and the even numbered pages from bottom to top.

How the record
is to be kept
and made up.

SEC. 276. Whenever several persons shall be tried by the same Court, each record of proceedings shall be authenticated, and made up separately.

Distinct trials to
be signed and
made up separately.

CHAPTER VI.

BOARDS.

SEC.

277. Examination of candidates for promotion on the active list.
278. Examination by Board of Surgeons.
279. Physical disqualification by wounds.
280. Certificates to be furnished by the Medical to the Professional Board.
281. Examination into the mental, moral, and professional fitness of candidates.
282. Examination to include the grade of Commodore, in time of peace.
283. Board to consist of not less than three Members.
284. Powers of the Board.
285. Witnesses to be sworn.
286. Officer whose case is before the Board has a right to be present.
287. His statement and the testimony of witnesses to be recorded.
288. The President of the United States to approve or disapprove the finding.
289. No Officer to be rejected without examination of himself and his record.
290. Certificate of Medical Board to be affixed to the Proceedings.
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292. Form of report recommending the Officer for promotion.
293. Examination of Passed Assistant Surgeons.
294. Qualifications to be required.
295. Requirements for promotion to the grade of Surgeon.
296. Examination of Assistant Paymasters.
297. Examination of Assistant Naval Constructors.
298. Examination of Second Assistant Engineers.
299. Examination of First Assistant Engineers.
300. Of whom the two latter Boards are to consist.

SEC.

301. Examination in foreign languages.
302. Retiring Board; number and rank of Members.
303. Members to be sworn.
304. Finding and report of Retiring Board.
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306. Retiring Board for Officers of the Marines.
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308. Powers and duties of the Board.
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312. Board for the investigation of casualties.
313. Report to be in writing, signed by the Members, and approved by the Officer who ordered the Board.
314. Board not to swear witnesses or record their declarations.
315. Precedence of Officers on Boards.
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322. Of whom composed.
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324. Appearance of the body noted.
325. Opinion of the Surgeon on examining the corpse.
326. Adjournment to make the report.
327. Procedure when marks of violence are apparent.
328. Form of recording the proceedings of a Board of Inquest.
329. Record to show whether the death was occasioned by an act of duty.

SEC. 277. At stated or convenient periods, Boards will be ordered for the examination of candidates for appointment or promotion, who will be duly informed of the time and place of meeting.

SEC. 278. No Officer on the Active List of the Navy can be promoted to a higher grade on that list until his physical condition shall have been determined by a Board of Surgeons, and he shall have been pronounced by them physically qualified to perform all his duties at sea.

SEC. 279. If, however, an Officer whose physical disqualification shall be reported by said Medical Board to have been occasioned by wounds in his line of duty, which do not incapacitate him for other duties in the grade to which he shall be advanced, he shall not be excluded from the promotion to which he would otherwise be entitled.

SEC. 280. The said Board of Naval Surgeons will furnish to the Board appointed to examine candidates professionally a list of all such who shall be found physically unfit either for appointment in the service or promotion on the Active List, and also a certificate of fitness of every candidate who may pass the physical examination.

SEC. 281. No Officer of the Line below the grade of Commodore, and no Officer not of the Line, can be promoted to a higher grade on the Active List of the Navy, until his mental, moral, and professional fitness to perform all his duties at sea shall have been established to the satisfaction of a Board of Officers appointed by the President of the United States.

SEC. 282. During times of peace, Commodores, before promotion to the grade of Rear-Admiral on the Active List, are subject to examination as aforesaid.

SEC. 283. Such Examining Board shall consist of not less than three Officers senior in rank to the Officer to be examined.

SEC. 284. Said Board shall have power to take testimony and to examine all matters on the files and records of the Department in relation to any Officer whose case shall be considered by them.

SEC. 285. The witnesses when present shall be sworn by the President of the Board.

Examination of
candidates on
the active list.

Physical exami-
nation.
Act of April
21, 1864, § 4.

Physical disqual-
ification by
wounds.
Act of July 28,
1866, § 1.

Certificates to be
furnished by
the Medical
Board to the
Board of Ex-
aminers.

Examination of
professional fit-
ness.
Act of April 21,
1864, § 1.

Promotion to
Rear Admiral
in time of peace.
Act of July 16,
1862, § 7, amend-
ed by April 21,
1864, § 1.

Examining
Board.
Act of April 21,
1864, § 2.

Powers of the
Board.
Act of April 21,
1864, § 1.

Witnesses.
Ibid.

Officer may be present and make statement. SEC. 286. Any Officer whose case may be acted upon by said Board shall have the right to be present if he so desire, and to submit a statement of his case on oath.

Act of April 21,
1864, § 3.

Record.

Act of April 21,
1864, § 3.

SEC. 287. The statement of such Officer, if made, his examination, and the testimony of the witnesses shall be recorded.

Revision by the President.

Act of April 21,
1864, § 3.

SEC. 288. Any matter on the files and records of the Navy Department touching each case, which in the opinion of the Board may be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President of the United States for his approval or disapproval of the finding.

No officer to be rejected without examination.

Act of April 21,
1864, § 3.

SEC. 289. No officer shall be rejected until after such public examination of himself and of the records of the Navy Department in his case, unless he shall fail to appear before the Board after having been duly notified.

Certificate of the Medical Board to be appended to the proceedings.

SEC. 290. The Board, before proceeding to investigate the professional fitness of the candidate who presents himself, will receive and append to the record of their proceedings the certificate of the Board of Medical Officers that he is physically qualified.

Authentication and transmission of the record and documents.

SEC. 291. The record of proceedings will be signed by all the Members of the Board and transmitted together with all reports of qualification and other documentary evidence required for the information of the revising authority.

Report of recommendation.

Act of July 16,
1862, § 4, as amended by April 21,
1864.

SEC. 292. The following form of report is to be used in their recommendation of officers found worthy of further promotion:

"We hereby certify ——— has the moral, mental, physical, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion."

Passed Assistant Surgeons.

Act of May 24,
1828, § 3.

SEC. 293. Assistant Surgeons, after five years' service, are entitled to examination, by a Board of Naval Surgeons to be designated by the Secretary of the Navy, for promotion to the rank of Passed Assistant Surgeon.

Qualifications to be determined.

SEC. 294. At this examination the Assistant Surgeon will be expected to produce to the Board a journal of practice or case book, in his own hand-writing. He will be exam-

ined in all the details of duty specified in the Instructions for the Government of Medical Officers; finally, the Board will satisfy themselves that the required testimonials of correct deportment and attention to duty from the Commanding Officers and Surgeons with whom the Assistant Surgeon may have served, have been received by the Department.

SEC. 295. No further professional examination is required to qualify Medical Officers for promotion to the grade of Surgeon than that already stated in the preceding section; but the law provides, in addition, that no person shall be appointed to that grade until he shall have served as Assistant Surgeon at least two years at sea in the Navy.

SEC. 296. Boards for the professional examination of Assistant Paymasters for promotion to the grade of Paymaster must satisfy themselves that each candidate is competent to perform all the duties of Paymaster; that he is well acquainted with all the laws and regulations relating to the duties and responsibilities of that office; that he has a good, theoretical, and practical knowledge of bookkeeping and of the law and practice of exchange; the relative value of foreign coin and coin of the United States; the weights and measures of foreign countries; also, that he knows enough of the French and Spanish languages to enable him to transact his official business in those languages. This proficiency is not to be exacted until four years shall have elapsed after the promulgation of this regulation. Boards are likewise to require the candidate to produce satisfactory testimonials of character and deportment from the Commanding Officers with whom he has served, and letters from the Bureau of Provisions and Clothing, and from the Fourth Auditor's Office, in evidence that the returns of the candidate have been correctly made and sent in in time.

SEC. 297. Boards for the examination of Assistant Naval Constructors for promotion to the grade of Naval Constructor must satisfy themselves that the candidate writes a legible hand; spells correctly; and understands grammar, English composition, geography, history, and the French language; that he has acquired pure mathematics, embracing arithmetic, plane and descriptive geometry, plane trigonometry, and algebra, including quadratic equations, and its application to geometry; applied mathematics to mechanics and hydrostatics; the practice of ship-building, in wood and iron, embracing spars and boats, the designing of

Appointment of
Surgeons.
Act of May 24,
1828, § 1.

Assistant Pay-
masters.
Act of July 17,
1861, § 2.
Qualifications to
be determined.

Assistant Naval
Constructors.

Qualifications to
be determined.

ships, and all the necessary calculations; the "laying off;" the nature and quality of materials; mechanical and free-hand drawing; lastly, the keeping of accounts.

Second Assistant
Engineers.

Act of August
31, 1842, § 5, Mar.
3, 1851, §.

Services and tes-
timonials.

Qualifications to
be determined.

SEC. 298. Boards for the examination of candidates for promotion to the grade of First Assistant Engineer are to ascertain that such candidates have served at least two years at sea in the United States Navy as Second Assistant Engineers; and that favorable testimonials have been received in regard to them by the Department from the Commanding Officers and Senior Engineers with whom they may have served. The Board will also examine them thoroughly upon all the subjects prescribed for candidates for appointment as Second Assistant Engineers; and upon the principles, peculiarities, and uses of the different kinds of valves and valve-gear applied to marine steam-machinery; the construction, principles, peculiarities, and uses of the various apparatus for working steam expansively; the construction of the various marine boilers used commonly, together with their attachments, uses of the same, and the reasons therefor; the causes of derangement in the operation of air and feed pumps and feed pipes, and how to prevent and remedy them; the chemistry of boiler scale, the means of preventing it, and the mode of removing it; the construction, principles, peculiarities, and uses of the different kinds of surface condensers; how to calculate the loss by "blowing off" with the sea water in the boiler at a given concentration; the principles and manner of using the various instruments for determining the water's concentration and the method of graduating them; the theory of using steam expansively, together with the limits and modifications imposed by practice, and the necessary calculations connected therewith; the construction and mode of applying the indicator and the interpretation of its diagrams; the construction and principles of the various steam and vacuum gauges, and the causes of their derangement. Moreover, said candidates are required to have a thorough knowledge of rudimentary mechanics, to be well versed in the elements of geometry, including descriptive, and be well acquainted with the practical building and repairing of steam machinery.

First Assistant
Engineers.

Act of August
31, 1842, § 5, Mar.
3, 1851, § 3.

Services and tes-
timonials.

SEC. 299. Candidates for promotion to the grade of Chief Engineer must have served in the Navy at least two years as First Assistant Engineer, and favorable testimonials in regard to them must have been received at the Department

from the Commanding Officers and Senior Engineers under whom they may have served. They must also pass before the Board appointed to examine them a thorough examination upon the subjects prescribed for First Assistant Engineers, in addition to which they must satisfy the Board that they are well versed in mechanics and philosophy; the physical laws of steam; applied mechanics; the theory of the steam engine; and, likewise, in the construction, principles, and laws of action of the various types of marine governors, paddle-wheels, and screw propellers, and in all the necessary calculations relating to these. Furthermore, they must satisfy the Board that they are thoroughly acquainted with the various kinds of paddle-wheel and screw-propeller engines; design and erect them, and proportion them to a given vessel for a given speed, with a given propelling instrument; and point out their respective advantages and disadvantages; that they are conversant with the strength of materials; the theoretical laws governing form; the limitations and modifications required in practice and the reasons why; that they are familiar with the different kinds of boilers, their good qualities and defects, and can proportion and construct them so as to supply a given power under given conditions; lastly, that they understand the chemical laws of combustion and corrosion, and the metallurgic operations connected with Steam Engineering.

Qualifications to be determined.

SEC. 300. Boards for the examination of candidates for appointment or promotion shall be composed as follows: Of whom the Boards are to consist.

For Passed Assistant and Assistant Paymasters, not less than three Paymasters. Act of July 17, 1861, § 2.

For Assistant Naval Constructor, not less than three Constructors and a Professor of Mathematics.

SEC. 301. A competent officer of any branch of the service will be added, if necessary, to any Board by whom candidates are to be examined in a foreign language, or before whom an investigation may take place requiring an interpreter. Interpreter.

SEC. 302. Whenever any officer of the Navy, on being ordered to perform the duties appropriate to his commission, shall report himself unable to comply with such order, or whenever, in the judgment of the President of the United States, an officer is incapacitated to perform the duties of his office, the President, at his discretion, is empowered to direct the Secretary of the Navy to refer the case of such officer to a Board of not more than nine, nor less than five, Retiring Board. Act of August 3, 1861, § 23.

Number and rank of Members. Commissioned officers, two-fifths of whom shall be Members of the Medical Corps of the Navy. Said Board, except the officers taken from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is to be looked into.

Ibid.

Members to be sworn. SEC. 303. The Members of said Board must be sworn in each case to an honest and impartial discharge of their duties.

Ibid.

Finding and report. SEC. 304. When said Retiring Board finds an officer incapacitated for active service, they will report whether, in their judgment, the incapacity results from long and faithful service; from wounds or injury received in the line of duty; from sickness, or exposure, or from any other incident of service.

Ibid.

Revision by the President. SEC. 305. The record of proceedings and decision of the Board, in each case, duly authenticated by the signatures of every Member of the Board, shall be transmitted to the Secretary of the Navy, to be laid before the President of the United States for his decision in the case.

Ibid.

Retiring Board for Officers of the Marines. SEC. 306. A Retiring Board for Officers of the Marine Corps is by law required to be assembled by the Secretary of the Navy, under the direction of the President of the United States.

Act of August 3, 1861, § 15.

Of whom to consist. SEC. 307. Said Board must consist of not more than nine nor less than five Commissioned Officers, two-fifths of whom shall be selected from the Medical Corps of the Navy; and, excepting the Officers selected from the Medical Corps, shall be composed, as far as may be, of Seniors in rank to the Officer whose disability is to be inquired into; and may, in whole or in part, be composed of Officers of the Navy when such Seniors in rank cannot be taken from the Marine Corps.

Ibid., § 17.

Powers and duties of Board. SEC. 308. Said Board is authorized to inquire into and determine the facts touching the nature and occasion of the disability of any Officer who may appear to be incapable of performing the duties of his office; and shall have such powers of a Court-Martial and of a Court of Inquiry as may be necessary for that purpose.

Ibid., § 17.

Members to be sworn. SEC. 309. The Members of said Board are to be sworn in every case to discharge their duties honestly and impartially.

Ibid., § 17.

SEC. 310. When said Retiring Board shall find an Officer incapacitated for Active Service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service.

Finding and report of Board.
Ibid, § 17.

SEC. 311. A record of the proceedings and decision of the Board in each case shall be transmitted to the Secretary of the Navy, and laid by him before the President for his approval or disapproval, or orders in the case.

Record of the proceedings.
Act of August 3, 1861, §§ 17, 23.

SEC. 312. Commanders of shore stations, and of vessels acting singly not being empowered to order Courts of Inquiry, are required to order a Board of three Officers to investigate any casualty, occurrence, or transaction in regard to which the Department should be informed.

Investigation of casualties.

SEC. 313. The Board so ordered will make a report in writing, presenting fully, clearly, and as concisely as possible, all the facts they were called to look into, which report, signed by the Members of the Board and approved by the Officer who convened it, will be forwarded by him to the Secretary of the Navy. A copy of every such report will be entered in the journal of the station, or log-book of the vessel in which the investigation shall be made.

Report.

SEC. 314. It is to be understood that a Board of this kind, although they may collect material information from apparent or known facts or from written evidence of which they may be possessed, are not authorized to examine witnesses on oath or record their declarations.

Board not to swear witnesses or record their declarations.

SEC. 315. Officers on Boards are to take their seats in the same order of rank or seniority as on Courts-Martial.

Precedence of Officers on Boards.

SEC. 316. The Senior or Presiding Member is to preserve order, to decide upon matters relating to the routine of business, to decide upon a recess, and to adjourn the Board from day to day, at and to such hours as, in his judgment, will be most convenient and proper for the transaction of the business before it. Should, however, an objection be made by another Member of the Board to an adjournment announced by the Senior Officer, a vote is to be taken with regard to it, and the decision of the majority is to govern.

Powers and duties of Presiding Officer.

SEC. 317. No Board is to transact any other business than an adjournment unless at least two-thirds of the Members be present.

Quorum required for business.

Members not to fail in their attendance. SEC. 318. No Member of a Board, unless prevented by illness or some insuperable difficulty, ordered away by competent authority, or excused by the Officer ordering it, is to fail in his attendance at the appointed times; and in case of such failure, the Senior Officer present of the Board is to inform the Officer ordering it of the fact, and also of the reasons of the failure, if known to him, in order that the vacancy may be supplied if necessary.

Proceedings when a Member has been unavoidably absent. SEC. 319. A Member unavoidably absent from the Board for a time, is not, on his return, to vote upon the decision of any matter or case under investigation during his absence, unless after reinvestigation before the Board, in his presence and in that of the interested parties.

Appointment and duties of recorder. SEC. 320. A competent person shall be appointed by the Officer who orders the Board, to record their transactions, and, under their direction, draw up the final report which shall be based upon the opinions of the majority. Such report shall be signed by all the concurring Members. Those who do not concur will append and subscribe their names to their reasons for dissent.

Authentication of the report.

INQUESTS.

Board of Inquest. SEC. 321. In all cases occurring in the Navy of sudden death, attended with unnatural or suspicious circumstances, the Senior Officer present will order a Board of Inquest to assemble and investigate the subject.

Of whom composed. SEC. 322. The Board shall be composed of not less than three experienced commissioned officers, of whom one, at least, shall be of the Medical Corps.

SEC. 323. The Board and the witnesses are not sworn.

Appearance of the body noted. SEC. 324. The Board in the first instance should proceed to the spot where the body is found; take a view of it, notice its position, &c.

Opinion of Surgeon. SEC. 325. The Surgeon having examined the body, should point out to the Board the cause which in his opinion occasioned death.

Adjournment to make report. SEC. 326. The Board will then adjourn and record all the evidence procurable relative to the manner in which the deceased came by his death.

Procedure in case marks of violence are discovered. SEC. 237. If there be appearance of wounds or bruises on the person of the deceased, such as to indicate or create sus-

picion that he came to his death by violent means, it will be the duty of the Board to ascertain, with as much exactness as possible, the precise nature of the wounds or blows, and of the instrument by which they were inflicted; the person or persons by whom the fatal blow was dealt; if there were any aiders or abettors in the commission of the murder, and such other particulars as may afford the means of drawing up charges and specifications, if requisite, against the person or persons accused of the murder, with the precision required by law.

SEC. 328. Form of Recording the Proceedings of a Board of Inquest :

At a Board of Inquest assembled by order of ———, Commanding U. S. S. ———, on the ——— day of ———, 18—, at sea, or in the harbor of ———, on the body of (insert the name and rank or rating) found dead.

Present: ———, President; ———, ———, Members; ———, Recorder.

The order convening the Board was read and appended to the record; and the Board having viewed the body, proceeded to take the following evidence:

——— called before the board.

State all you know about the death of ———.

Answer ———.

The witness withdraws.

Surgeon ———, U. S. S. ———, states that, in his opinion, the deceased, &c., &c.

(The proceedings are here closed.)

The Board, from a view of the body, and the evidence before them, is of opinion that ——— died of a natural death; or by the visitation of God; or was killed; drowned; or was murdered by some person or persons unknown; or that ——— committed suicide by killing himself; or otherwise, as the case may be.

SEC. 329. The Court in every case will carefully look into and state in their record how far, in their opinion, the death of the individual was occasioned by any act of duty in which he was engaged when it took place.

Record to show whether the death was caused by an act of duty.

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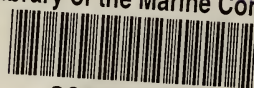
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